S. HRG. 101-394

LAW ENFORCEMENT REFORM ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION
ON

H.R. 498

TO CLARIFY AND STRENGTHEN THE AUTHORITY FOR CERTAIN DEPARTMENT OF THE INTERIOR LAW ENFORCEMENT SERVICES, ACTIVITIES, AND OFFICERS IN INDIAN COUNTRY

JULY 21, 1989
WASHINGTON, DC

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CONTENTS

	Page
S. 498, text of	3
Statements:	
Abeita, Juan, tribal council member, Isleta Pueblo, NM	47
Bleakney, Don, administrator, Law and Justice Committee, Colville Confederated Tribes	43
Haley, Bruce, U.S. deputy special officer, BIA, Bellingham, WA	49
Hogen, Philip N., U.S. attorney, District of South Dakota, Sioux Falls, SD	17
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, chairman, Select Committee on Indian Affairs	1
Joseph, Gene, chairman, Colville Legislative Committee; Colville Environmental Quality Commission, Colville Confederated Tribes, Nespelem, WA	43
Lucero, Alvino, president, Isleta Pueblo Tribal Council, Isleta Pueblo, NM	45
Manuel, Hilda, chief judge, Tohono O'odham Judiciary, Sells, AZ	29
McCain, Hon. John, U.S. Senator from Arizona, vice chairman, Select Committee on Indian Affairs	13
McNamee, Stephen M., U.S. attorney, District of Arizona, Phoenix, AZ	14
Mills, Walter R., Acting Deputy to the Assistant Secretary, Indian Affairs (Operations), Department of the Interior, Washington, DC	23
Yazzie, Herb, attorney general, Navajo Nation Department of Justice, Window Rock, AZ	32
Reina, Ed, Jr., chief, Law Enforcement Program, Salt River Indian Community, Phoenix, AZ	37
Salway, Harold, vice president, Oglala Sioux Tribe, Pine Ridge, SD, on behalf of Paul Iron Cloud, president, Oglala Sioux Tribe	54
Zecca, Tony, chief of police, Miccosukee Tribe, Miami, FL	56

APPENDIX

Prepared statements:	
Agoyo, Herman, chairman, All Indian Pueblo Council	115
Aragon, Beverly, chief of police, Ramah Navajo Department of Public Safety (with attachments and resolution)	168
Begay, Delfino, Governor, Pueblo of Laguna	197
Cheyenne River Sioux Tribe	199
Haley, Bruce	125
Hogen, Philip, N	62
Iron Cloud, Paul (with attachments)	128
Joseph, Gene (with resolution)	109
Lewis, Robert E., Governor, Pueblo Zuni	203
Lucero, Alvino (with attachments)	119
Manuel, Hilda (with attachments)	81
McCain, Hon. John, U.S. Senator from Arizona, vice chairman, Select Committee on Indian Affairs	59
McNamee, Stephen M	62
Mills, Walter R	76
Ramah Band of Navajo Tribe	167
Reina, Ed	107
Taylor, Jonathan, principal chief, Eastern Band of Cherokee Indians	206
Thornberg, Lacy, attorney general, North Carolina	206
Yazzie, Herb	98
Zecca, Tony	157
Additional material submitted for the record:	
Haskie, Leonard, interim chairman, Navajo Tribal Council, letter	210

Page

Additional material submitted for the record—Continued
Inter Tribal Council of Arizona, comments 216
Suagee, Dean, letter 211
Tsosie, Wallace, chairman, Public Safety Committee, Navajo Tribal Council (with resolution) 213

LAW ENFORCEMENT REFORM ACT

FRIDAY, JULY 21, 1989

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, McCain, and Daschle.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning.

Our hearing this morning is on H.R. 498, a bill to establish the statutory foundation for the law enforcement program of the Bureau of Indian Affairs on Indian reservations.

The Interior Department has operated a law enforcement program within Indian country since the late 1800's, when control of the reservations passed to civilian authorities. The original effort was essentially an experiment in which a superintendent undertook to employ a few Indians of the reservation to assist in maintaining law and order within the community.

The development of tribal courts—or more properly, secretarial courts or courts of Indian offenses—began at this time. Neither of these programs had any statutory basis but were annually supported by Congress through the appropriation of funds for their operation.

In time, a certain statutory base was established, but this was tenuous and supports the program more by implication than by direct statutory authorization. Indeed, it appears that the principal authority for this program continues to rest on the annual appropriations "for maintaining law and order on Indian reservations."

In recent years Congress has enacted special legislation to provide for law enforcement authority of officers in other programs administered by the Interior Department, particularly the National Park Service, the Bureau of Land Management, and the Fish and Wildlife Service.

The intent of this bill is to provide greater clarity with respect to the authority of BIA police officers, or programs operated by the tribes under contracts with the Bureau; better protection and benefits to those serving as Indian police officers; and enhancement of training programs for the Indian Police Service.

There are also provisions relating to investigations of crimes committed in Indian country and the relationship of those investigating these crimes and the United States Attorneys' Offices, which have generated some controversy.

[Text of H.R. 498 follows:]

II

101ST CONGRESS
1ST SESSION

H. R. 498

IN THE SENATE OF THE UNITED STATES

MAY 31 (legislative day, JANUARY 3), 1989
Received; read twice and referred to the Select Committee on Indian Affairs

AN ACT

To clarify and strengthen the authority for certain Department of the Interior law enforcement services, activities, and officers in Indian country, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Law Enforcement Reform Act".

SEC. 2. DEFINITIONS.

In this Act, unless the context otherwise requires—

(1) "employee of the Bureau of Indian Affairs" includes an officer of that bureau;

(2) "enforcement" of a law includes the prevention, detection, and investigation of an offense and the detention and confinement of an offender;

(3) "Indian country" has the meaning given that term in section 1151 of title 18, United States Code;

(4) "Indian tribe" has the meaning given that term in section 201 of the Act of April 11, 1968 (82 Stat. 77; 25 U.S.C. 1301);

(5) "law" includes a regulation authorized by law;

(6) "offense" means an offense against the United States and includes a violation of a Federal regulation relating to part or all of Indian country; and

(7) "Secretary" means the Secretary of the Interior.

SEC. 3. INDIAN LAW ENFORCEMENT RESPONSIBILITIES.

(a) SECRETARIAL RESPONSIBILITY.—The Secretary, acting through the Bureau of Indian Affairs (BIA), shall be responsible for providing, or for assisting in the provision of, law enforcement services in Indian country as provided in this Act.

(b) DIVISION OF LAW ENFORCEMENT SERVICES.—There shall be, within the BIA, a Division of Law Enforcement Services which, under the supervision of the Secretary or the Secretary's designee, shall be responsible for carrying

out the law enforcement functions of the Secretary in Indian country and for implementing the provisions of this section.

(c) DIVISION RESPONSIBILITIES.—Subject to the provisions of this Act and other applicable Federal or tribal laws, the Division of Law Enforcement Services, in carrying out its functions, shall be responsible in Indian country, for, inter alia—

(1) the enforcement of relevant Federal law and, with the consent of the Indian tribe, tribal law;

(2) in cooperation with appropriate Federal and tribal law enforcement agencies, the investigation of offenses against criminal laws of the United States;

(3) the protection of life and property;

(4) the reduction of the incidence of crime which adversely affects the quality of life;

(5) the development of methods and expertise to resolve conflicts and solve major crimes;

(6) the provision of criminal justice remedial actions and rehabilitation;

(7) the reduction of recidivism and adverse social effects;

(8) the development of preventive and outreach programs which will enhance the public conception of law enforcement responsibilities through training and development of needed public service skills;

(9) the assessment and evaluation of program accomplishments in reducing crime; and

(10) the development and provision of law enforcement training and technical assistance.

(d) BRANCH OF CRIMINAL INVESTIGATION.—(1) The Secretary shall cause to be created within the Division a separate Branch of Criminal Investigations which, under such inter-agency agreement as may be reached between the Secretary and appropriate agencies or officials of the Department of Justice and subject to such guidelines as may be adopted by relevant United States Attorneys, shall be responsible for the investigation, and presentation for prosecution, of cases involving violations of the General Crimes Act (18 U.S.C. 1152) and the Major Crimes Act (18 U.S.C. 1153) within Indian country.

(2) The Branch of Criminal Investigations shall not be primarily responsible for the BIA's function of routine law enforcement and police operations in Indian country and, unlike such operations, shall not be subject to contracting under the Indian Self-Determination Act.

(3)(A) Criminal investigative personnel of the Branch shall be subject only to the supervision and direction of law enforcement personnel of the Branch or of the Division. Such personnel shall not be subject to the supervision of the BIA Agency Superintendent or BIA Area Office Director. Noth-

ing in this paragraph is intended to prohibit cooperation, coordination, or consultation, as appropriate, with nonlaw enforcement BIA personnel at the Agency or area levels.

(B) The Secretary shall adopt regulations which shall require, and establish a procedure for, active cooperation and consultation of BIA criminal investigative personnel assigned to an Indian reservation with the governmental and law enforcement officials of the Indian tribe located on such reservation.

(e) LAW ENFORCEMENT PERSONNEL; STANDARDS; PAY COMPARABILITY.—(1) The Secretary shall establish appropriate standards of education, experience, training, and other relevant qualifications for law enforcement personnel of the Division who are charged with law enforcement responsibilities pursuant to section 4 of this Act.

(2) The Secretary shall also provide for the classification of such positions within the Division at GS grades, as provided in section 5104 of title 5, United States Code, consistent with the responsibilities and duties assigned to such positions and with the qualifications established for such positions.

(3) In classifying positions in the Division as provided in paragraph (2), the Secretary shall ensure that such positions are classified at GS grades comparable to those for other Federal law enforcement personnel in other Federal agencies

in light of the responsibilities, duties, and qualifications required of such positions.

SEC. 4. LAW ENFORCEMENT AUTHORITY.

The Secretary may charge an employee of the BIA with law enforcement responsibilities and may authorize the employee to do any of the following:

(1) carry firearms;

(2) execute or serve warrants, summonses, or other orders relating to a crime committed in Indian country and issued under the laws of the United States (including those issued by a Court of Indian Offenses under regulations prescribed by the Secretary) or of an Indian tribe if authorized by the tribe;

(3) make an arrest without a warrant for an offense committed in Indian country—

(A) in the presence of the employee; or

(B) if the offense is a felony and the employee has reasonable grounds to believe that the person to be arrested has committed or is committing the felony;

(4) offer and pay a reward for services or information or purchase evidence assisting in the detection or investigation of the commission of an offense committed in Indian country or in the arrest of an offender against the United States;

(5) make inquiries of, and administer to, or take from a person an oath, affirmation, or affidavit, concerning any matter relevant to the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the employee to enforce or carry out its laws;

(6) wear a prescribed uniform and badge or carry prescribed credentials;

(7) perform any other law enforcement related duty; and

(8) when requested, assist (with or without reimbursement) any Federal, tribal, State, or local law enforcement agency in the enforcement or carrying out of the laws and regulations they enforce or administer.

SEC. 5. ASSISTANCE BY OTHER AGENCIES.

(a) SECRETARIAL AGREEMENT WITH OTHER AGENCIES.—The Secretary may enter into an agreement for the use (with or without reimbursement) of the personnel or facilities of a Federal, tribal, State, or other government agency to aid in the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the Secretary to enforce its laws. The Secretary may authorize a law enforcement officer of such an agency to do any of the things which the Secretary may authorize under section 4 of this Act.

(b) ACCORD WITH UNITED STATES ATTORNEY GENERAL.—An agreement under this section relating to the enforcement of the criminal laws of the United States shall be in accord with an agreement between the Secretary and the Attorney General of the United States.

(c) TRIBAL CONSENT.—The Secretary may not use the personnel of a non-Federal agency under this section if the tribe with jurisdiction over the area of Indian country involved has by resolution objected to the use of that agency's personnel.

(d) 31 U.S.C. 1535; LIMITATIONS ON INTER-AGENCY AGREEMENTS; EXEMPTION.—Notwithstanding the provisions of section 1535 of title 31, United States Code, the head of a Federal agency with law enforcement personnel or facilities may enter into an agreement (with or without reimbursement) with the Secretary under subsection (a) of this section.

(e) AGREEMENTS WITH INDIAN TRIBES.—The head of a Federal agency with law enforcement personnel or facilities may enter into an agreement (with or without reimbursement) with an Indian tribe relating to the tribe's law enforcement authorities or carrying out of a law of either the United States or the tribe.

(f) STATUS OF NON-FEDERAL PERSONNEL UNDER AGREEMENTS.—While acting under authority granted by

the Secretary under subsection (a) of this section, a person who is not otherwise a Federal employee is deemed an employee of the Department of the Interior only for purposes of section 3374(c)(2) of title 5, United States Code, and sections 111 and 1114 of title 18, United States Code; and an "eligible officer" under subchapter III of chapter 81 of title 5, United States Code.

SEC. 6. REGULATIONS.

After consultation with the Attorney General of the United States, the Secretary may prescribe regulations under this Act relating to the enforcement of criminal statutes of the United States.

SEC. 7. JURISDICTION.

(a) SECRETARIAL JURISDICTION; AGREEMENT WITH ATTORNEY GENERAL.—The Secretary shall have investigative jurisdiction over offenses against criminal laws of the United States in Indian country subject to an agreement between the Secretary and the Attorney General of the United States.

(b) COOPERATION WITH OTHER AGENCIES.—In exercising the investigative authority conferred by this section, the BIA's personnel shall cooperate with the law enforcement agency having primary investigative jurisdiction over the offense committed.

(c) SAVINGS PROVISION.—This Act does not invalidate or diminish any law enforcement commission or other delegation of authority issued under authority of the Secretary before enactment of this Act.

(d) PRESERVATION OF JURISDICTION AND AUTHORITIES.—The authorities provided by this Act are in addition to, and not in derogation of, any existing authority. This Act alters neither the civil or criminal jurisdiction of the United States, Indian tribes, States, or other political subdivisions or agencies, nor the law enforcement, investigative, or judicial authorities of any Indian tribe, State, or political subdivision or agency thereof, or of any department, agency, court, or official of the United States other than the Secretary.

SEC. 8. UNIFORM ALLOWANCE.

Notwithstanding the limitation in section 5901(a) of title 5, United States Code, the Secretary may provide a uniform allowance for uniformed law enforcement officers under section 4 of this Act of not more than $400 a year.

SEC. 9. SOURCE OF FUNDS.

Any expenses incurred by the Secretary under this Act shall be paid from amounts appropriated under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

Passed the House of Representatives May 23, 1989.

Attest: DONNALD K. ANDERSON,

Clerk.

The CHAIRMAN. Before we proceed with our first panel of witnesses I would like to call upon my colleague, the vice chairman of this committee.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, VICE CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

Senator MCCAIN. Thank you very much, Mr. Chairman.

We are here today to receive testimony on H.R. 498, the Indian Law Enforcement Reform Act, which was referred to our committee on May 31.

I would first like to recognize and acknowledge several of our distinguished witnesses from Arizona: Mr. Stephen McNamee, the U.S. Attorney for the District of Arizona; The Honorable Hilda Manuel, the Chief Judge of the Tohono O'odham Nation; Mr. Herb Yazzie, the Attorney General for the Navajo Nation; and Mr. Ed Reina, the Chief of Police of the Salt River Pima-Maricopa Community. We are very pleased to have all of them here today.

The purpose of H.R. 498 is to provide clear statutory authority for the law enforcement functions of the Bureau of Indian Affairs. The current authorities relied upon by the BIA for BIA law enforcement officers to perform routine law enforcement practices such as carrying firearms, conducting searches and seizures, and even making arrests, are broad authorizations under the Snyder Act and general statutory references to the authority to "maintain law and order" on Indian reservations. These general references do not present explicit statutory authority and could invite challenges to BIA law enforcement authority in the courts.

Several Indian tribes have voiced concerns regarding section (D)(2) of the bill. This section exempts the Branch of Criminal Investigations from tribal contracting under P.L. 93-638. I am anxious to hear testimony as to whether a blanket prohibition on tribally-contracted criminal investigation programs is necessary and how this prohibition would impact tribal law enforcement programs which currently exercise this authority.

Another tribal concern is the deletion of provisions which would have required Federal law enforcement agencies investigating major crimes on reservations to provide a copy of their case file to tribal law enforcement authorities when an investigation has been terminated or a prosecution declined so that the tribe can pursue a criminal action in tribal court for a violation of tribal law. One can understand the concern of tribal communities to see that criminal offenders who have committed major crimes on the reservation are prosecuted, whether it is in the Federal courts or in their own courts.

Mr. Chairman, as you may remember, I introduced a bill in the 99th Congress, H.R. 4900, which would have granted criminal misdemeanor jurisdiction over non-Indians to the Salt River Pima-Maricopa Indian community. The Salt River community and the surrounding communities supported that measure to provide an avenue for the community to prosecute misdemeanors committed on their lands by non-Indians. Over the years the Salt River community has been frustrated by the inability to prosecute these crimes effectively. This created a situation where the violations of

misdemeanor criminal codes for community residents are not applicable to non-Indians, which resulted in a situation where two classes of people live side-by-side and the law enforcement officials can only prosecute the Indian class.

I have heard a similar frustration from tribes regarding the failure to prosecute tribal members who have committed major crimes on Indian reservations. I am considering the possibility of introducing an amendment to this bill similar to the bill I introduced in the 99th Congress in order to address the concerns raised by the Salt River Pima-Maricopa Indian community.

Again, I welcome all our witnesses and look forward to your testimony.

Thank you, Mr. Chairman.

[Prepared statement of Senator McCain appears in appendix.]

The CHAIRMAN. Thank you very much, Senator.

We are very fortunate to have the Vice-Chairman with us; he has been in the forefront in this area.

We have four panels this morning. The first panel consists, as pointed out by the Vice-Chairman, of the U.S. Attorney of the District of Arizona, the Honorable Stephen McNamee; the U.S. Attorney for the District of South Dakota, Sioux Falls, the Honorable Philip N. Hogen, and the Acting Deputy Assistant Secretary, Indian Affairs (Operations), Department of the Interior, Mr. Walter R. Mills.

I will call first on the United States Attorney from the District of Arizona, but before you present us with your testimony, because of the immediacy and the urgency of the matter involved, could you just brief us as to what happened in Navajo land, just today?

STATEMENT OF HON. STEPHEN M. McNAMEE, U.S. ATTORNEY, DISTRICT OF ARIZONA, PHOENIX, AZ

Mr. MCNAMEE. Thank you, Mr. Chairman and Mr. Vice Chairman.

I was in Washington, DC as of yesterday, working on this testimony, and I received a call last night at my hotel from the FBI. I'm not quite sure and clear about the facts. Mr. Donovan is also here from the BIA, but I will attempt to relate the facts as near as I understand them.

We had understood that yesterday there was to be some sort of a rally by various individuals who purportedly—and I use that word advisedly, because I'm receiving all of this second-hand at this point—who purportedly were supporting the chairman, who is on administrative leave; that is Mr. MacDonald. As most everyone knows, and as is a matter of public record, there has been an ongoing Grand Jury investigation, and I cannot comment further than that.

Senator MCCAIN. May I ask one question?

The CHAIRMAN. Please do.

Senator MCCAIN. Mr. McNamee, I have a fax copy of a document that purportedly states the following. It is under the letterhead of the Navajo Nation. It says, "Executive Order, July 20th, 1989." In the left-hand corner it has "Peter MacDonald, Chairman." It says,

"To William Kellogg, Chief of Police, Division of Public Safety; from Peter MacDonald, Sr., Chairman, Navajo Tribal Council."

It says,

By virtue of the powers vested in me as the Chief Executive Officer of the Navajo Nation, you are hereby directed as follows: One, effective immediately you shall reassume the position of Chief of the Navajo Police. Two, you are ordered to immediately take all actions necessary to reinstate tribal law enforcement officers under your command who were terminated since February, 1989 by order of the interim government. Three, you are further ordered to assist with the orderly restoration and transition of the administration of the Navajo government, which is to take place this 20th day of July, 1989.

There is a signature that says,

Peter MacDonald, Sr., Chairman, Navajo Tribal Council.

In your view is this a legal document?

Mr. MCNAMEE. Again, I'm going to put myself out on a limb. It is my opinion, without involving myself in the internal workings of the Navajo Nation—I believe the Navajo Attorney General is here and is better capable to address the legalities of that document—in my opinion, however, as my office deals with the Navajo Nation, we would not recognize that document. We have no basis for believing that Mr. MacDonald is anything but on administrative leave.

To get back to the position which I think impacts that particular document, Senator, we were informed yesterday that someone was purportedly going to introduce some document to the media which allegedly absolved Mr. MacDonald of any potential criminal wrongdoing and investigation by our office.

We asked for a copy of that. To my knowledge, we have never received it. I don't know whether the media has a copy or not.

We informed the Chief of Police, the Chairman of the tribe, and various media representatives who called our office that in our opinion no such document existed. The person who they claimed had signed this document would not have written such a letter. In our opinion there was no basis to yield control of the Police Department because it is our opinion that the investigation is continuing. As of about 3:00 o'clock yesterday, a meeting between Mr. Kellogg, who was trying to restore order to his Police Department, never came about. At about 3:30—I'm gauging my time frames, now, from what was told to me last night at almost midnight, at our time here in Washington, DC—things were calm. As I said, all of a sudden at midnight I got a call saying that late in the afternoon, the tragic problems which occurred up on the Navajo reservation resulted in those deaths. I was as shocked as anyone and saddened by what has gone on, which is basically an internal civil dispute over control of the government.

But to get back to your basic premise, in our opinion and in our experience in dealing with the Navajo Tribe, we have yielded to the Navajo Tribe's internal workings, that Mr. Haskie is the Chairman, and until proven otherwise, we would not recognize that document.

Senator MCCAIN. I am anxious to follow up briefly, Mr. Chairman. I appreciate your indulgence.

The CHAIRMAN. Please do.

Senator MCCAIN. In your experience and legal opinion, could a document like this, distributed by a person who does not legally

have the authority to do so—could that action be described as incitement?

Mr. MCNAMEE. There is always that potential. That is the first time that I have seen or even been told of that document, Senator, so we would have to take a look at that to see if that would meet the Federal criminal statutes on incitement to riot. That's a very tricky statute to apply. I'm not trying to beg off on that; we'll always face very tough questions, but when a flash point like this occurs it is always very difficult to make a decision on the spur of the moment. It could further compound the problems that are going on there.

I have talked to Mr. Donovan this morning; as I understand it things have calmed down considerably up there. Again, I would appreciate any information that anyone else has that could help me out here.

Senator MCCAIN. Finally, Mr. McNamee, and I will ask also the Navajo Attorney General who is here, what options do the interim tribal Chairman, Mr. Haskie, and the interim tribal government have to prevent further incidents of violence? In other words, can they call on your office? Can they call on the BIA? Can they call on the FBI? What options do they have?

Mr. MCNAMEE. Senator, there is a mechanism through the Department of Interior that provides—the United States Attorney's Office is not a general law enforcement-keeping operation. That is not our function. However, I must tell you that, quite candidly, we have been working very diligently behind the scenes to try to maintain peace and quiet and defuse the problem up there. I have had numerous attorneys go up there to attend meetings, to talk to people. Many times the people who schedule the meetings don't even show up to honor our commitment for the meeting. We have sent information up there; we have talked to people; our offices have been open; people have called us. We do the best we can; within our framework to do that, but there is a mechanism within the Department of Interior as the situation escalates to enhance the Federal presence up there. But with enhancement of Federal presence in the obtaining of civil law, you get the argument on the other side that people are being denied their civil rights under the First Amendment to petition their government as they see fit. There is a delicate balance there between someone who disapproves of either government, to not be able to espouse their dissatisfaction with the government, either in power or ousted from power. The problem comes when there is a flash point, as there was yesterday, and violence occurs.

It is always easy in retrospect to say how it might have happened or could have happened, but at that point in my opinion there was no basis for an escalated presence by BIA yesterday. Certainly the Department of Interior, who has primary responsibility over this, if they feel they can't handle it can move up to the level of the Marshal Service and ultimately the FBI or what have you. But there is an assessment and a value by the people in charge who look at this on a day-in, day-out basis to assess these problems to see whether a further enhancement of law enforcement presence is necessary.

Senator MCCAIN. I share your view that it is a great tragedy. I don't know if it could have been prevented or not, but I would suggest that all of us must work together to see that there is not a repetition of this tragedy.

Mr. MCNAMEE. I share your concern, Senator. As I said, we had every expectation as of about 3:00 o'clock yesterday, when the meetings did not occur, that the situation had been fairly defused from our point of view. Obviously, it was not.

Senator MCCAIN. Thank you very much, Mr. Chairman.

The CHAIRMAN. I thank you.

I noted that during your inquiry, the representative from the Department of Interior was nodding. Would you tell us the role that Department of Interior will play in the event assistance is required?

Mr. MILLS. Thank you, Mr. Chairman.

I was in contact with the Area Director, Mr. Jim Stevens, at the Navajo Area Office at about 10:15 last night. On his report, the tribe did do an excellent job out there as far as law enforcement is concerned. The situation at that time was well under control. There was a group of about 40 individuals still around the Tribal Finance Building. They had broken some windows out there. We do know that there were some shots fired. We know that one individual was killed; a police officer was wounded; two other demonstrators were apparently shot. I think that at this time the Navajo Tribe has everything under control. The two Area Directors from Phoenix and Albuquerque have sent in some uniformed police who are standing by to assist the Navajo Tribe. The Departments of Public Safety from both Arizona and New Mexico are cooperating with the tribe. I think the situation is well under control.

The CHAIRMAN. Mr. McNamee.

Mr. MCNAMEE. With all due respect, Senator Inouye, at this time I would—I have comments within the framework that Senator McCain asked to be addressed, but I would like to yield the floor at this point, if I could, to the Chairman of the Indian Affairs Subcommittee, Philip Hogen, to present the basic outline of our testimony at this point because he is the ranking U.S. Attorney on Indian matters. He is also an enrolled member of the Pine Ridge reservation in Sioux Falls, SD. After that I would like to come back and address some of the concerns from the Arizona perspective on the questions that you and Senator McCain have raised on this matter, if I might, please.

The CHAIRMAN. That would be fine.

Mr. Hogen.

[Prepared statement of Messrs. McNamee and Hogen appears in appendix.]

STATEMENT OF PHILIP N. HOGEN, U.S. ATTORNEY, DISTRICT OF SOUTH DAKOTA, SIOUX FALLS, SD

Mr. HOGEN. Thank you, Senator Inouye and Senator McCain. I am Philip Hogen, the U.S. Attorney from the District of South Dakota. I serve as the Chairman of the Indian Affairs Subcommittee of the Attorney General's Advisory Committee, and we have prepared a statement on behalf of the Department of Justice by

Mr. McNamee and myself, and we would ask that that be included in the record.

The CHAIRMAN. Without objection, so ordered.

Mr. HOGEN. To summarize the position that we are taking with respect to this important legislation, we, the United States Attorneys, are responsible for prosecuting violations of Federal law when they occur in our districts, and for those of us with significant amounts of Indian country, a very large share of our caseload is represented by cases that constitute crimes committed by and against Indians in Indian country.

We rely on a number of law enforcement agencies to bring those cases to us so that we can prosecute. The FBI has, for a long time, been responsible for investigation of the most serious offenses that are committed there. Also, in this dichotomy of jurisdictions and offenses, Bureau of Indian Affairs law enforcement officers and tribal officers bring cases to our offices so that we can make prosecutive decisions and take those cases to Federal Grand Juries and the U.S. District Court.

The Bureau of Indian Affairs has served long and faithfully in bringing these cases and in enforcing the law on reservations but, as you know and as you noted in their remarks, they don't have a formal "commission," so to speak, to perform these law enforcement functions. This important legislation that you are considering would give that to them. I don't think there is really any quarrel about that proposition. I think the bill which you have before you is a good vehicle to formalize that law enforcement authority, and we United States Attorneys who have this responsibility to prosecute the cases Federally will certainly be more comfortable when we are working with BIA law enforcement officers, knowing that there can't be some technical-type challenge to their law enforcement authority if this law is enacted.

Likewise, when this law enforcement authority is formalized it will remove some of the questions that have arisen when Bureau of Indian Affairs law enforcement officers have attempted to enter into cooperative and cross-deputization agreements with State and local authorities, because when those agreements are drawn—cross-deputization and so forth—rightly so, the State and local authorities want to know from whence the law enforcement power of these BIA officers comes. Right now we are not able to point with any specificity to the statute or document that gives them that authority; this legislation will do that.

There are a couple of specific points that I would like to address that are very significant to us, the U.S. Attorneys. One is line authority. For the most part, we take Federal cases into Federal court based on investigations performed by Federal law enforcement agencies, be that the FBI, the Secret Service, the Marshal Service, or the Drug Enforcement Administration. But without exception, those agencies have a law enforcement chain of command. Everybody up and down the line, from the investigative agent or even patrolman to the head of the agency, is a law enforcement professional. In the Bureau of Indian Affairs we find that we have BIA patrol officers; uniformed officers; we have criminal investigators at a particular agency or reservation, and they report to the agency superintendent. The superintendent in turn reports to the

Area Director in the particular BIA area. Superintendents and Area Directors, of course, have a vast amount of responsibility for the many programs that the BIA administers in Indian country.

We have been concerned, and we have seen instances where it is difficult to focus on the important law enforcement responsibilities and to give that the isolation or insulation that it perhaps needs when it is thrown into this kettle of all the other responsibilities. We would like to see law enforcement professionalism, so to speak, by making the lowest patrol officer through the criminal investigator through the head of law enforcement there at the agency level to the area level to the national level be a law enforcement chain of command. We think that this will strengthen law enforcement within the BIA ranks and make it better for us to do our job in prosecuting the violations that occur there.

Another matter that I would like to address is the section that was deleted from the House bill that Senator McCain referred to with respect to turning over the files or reporting declinations or deferrals by U.S. Attorneys when we decide not to prosecute a case that has been brought to us involving a situation in Indian country, when we decide that it is more appropriate for that matter to be handled at the tribal level.

Certainly, we understand that cases can't be prosecuted at the tribal level if they don't know about the case or about the investigation or if they don't know that we at the Federal level are done considering it and want them to act. There have been instances where cases have fallen through the cracks or there has been a breakdown in communication, when a U.S. Attorney's Office gets a report with respect to a crime, considers it, decides that it does not rise to the level of a Federal case and ought to be prosecuted tribally, and that doesn't get communicated. Having heard about those instances, we have taken steps to ensure that not only the local tribal law enforcement agency, whether that be Bureau of Indian Affairs or tribal, is notified, but also that the tribal prosecutors are notified of the fact that we are deferring to tribal authorities the prosecution of cases that we are not going to take Federally.

Now, we will defer those or decline those for a number of reasons. Oftentimes, of course, we will find that there was no offense committed, that this was in effect a false or a misleading allegation of a criminal activity. We don't prosecute those cases. We will inform the people involved in the investigation at the tribal level that there will not be a prosecution of this case, but when it is clearly demonstrated to us that there is no basis to the allegation, we don't believe that it is appropriate to, in effect, give further dissemination to these false allegations by sending a case file, including confidential interviews, that sort of thing, to the tribal prosecutorial level.

There are other instances, of course, where we decide not to prosecute a case because of evidentiary problems. We may be satisfied that the crime was committed; we may even be satisfied that we know who committed the crime, but there may not be enough admissible evidence to take that case into Federal court or tribal court. Again, we will notify the tribal authorities, prosecutors, and law enforcement agencies, of what we have done, but the other agencies that we work with that participate in these investigations,

including the FBI, have a policy that they don't turn over their files in such a situation to State agencies and local agencies, and we don't feel it is appropriate to do that here in this instance with tribal agencies. I agree with that.

In my experience, we have not had serious problems with tribal authorities being unable to prosecute successfully because they haven't been able to get our cooperation. There have been bottlenecks and some problems with communication; I think we've gotten those straightened out. I think it would be a big mistake to put in to Federal law, to make it a statute, that this step would have to be taken. This is being done administratively; it can be done administratively, and it should be monitored. I think an additional step that would be appropriate would be to ensure that we, the U.S. Attorneys, know what has happened to those cases once we have deferred them to the tribal level. We don't always get a report back on whether if, in fact, there was a follow-through on that case. But that is something that we are working on through our Law Enforcement Coordinating Committees, and I think that we will be successful through those efforts.

The last issue I would like to touch on a little bit, and then Mr. McNamee will speak to it further, is that of contracting for the criminal investigation function. As you know, the Bureau of Indian Affairs is responsible for providing law enforcement in Indian country. In the old days, before self-determination, before Public Law 93-638, they did that in all cases directly. All of the law enforcement officers were Federal officers; they wore Federal uniforms; they got a Federal paycheck.

Since the inception of self-determination and 638, they now contract. They enter into contracts with tribes to perform those functions, as well as other functions. In many instances this has worked very well. There are reservations in South Dakota where we are delighted with the level of performance that we see by the tribal criminal investigators, but I am sorry to say that there are also instances where that performance has been less than good. There have been instances where, in my opinion as a Federal prosecutor, something should have been changed—something should have been done to bring the standard of criminal investigation on those reservations back up to the standard that we enjoyed when it was done by the Bureau of Indian Affairs. But for whatever reason, those contracts weren't terminated midstream and BIA didn't go back in; and as a result, victims suffered in Indian country. Law enforcement suffered on those reservations, and you can't go back and solve those problems later on with dollars or otherwise.

So for that reason we were extremely concerned about contracting for criminal investigation. We've had some long, serious discussions with the Department of the Interior in this regard and I believe that we now agree that we ought not tamper with this self-determination process, that we ought not to say in a criminal statute that you shouldn't or can't contract for criminal investigation. We think we need to raise the standard when that is done, and if and when that is done I think we will no longer have the concerns that we have.

I would be happy to respond to questions that you might have with respect to my experience as an Indian prosecuting cases in

Federal court and working in this area and what I've learned as Chairman of the Indian Affairs Subcommittee, but I would now like to defer to my colleague from Arizona, who will discuss this further.

Mr. McNAMEE. Thank you.

I would also endorse the concept of line authority within the field because I think it provides a measure of professionalism and a responsive nature by which people can control criminal investigations with little or no outside interference from any individuals or political subdivisions.

I would also like to mention that as far as the 638 contracts go, we have had some very wonderful experiences, professional experiences within Arizona with regard to tribal organizations that have taken over under a 638 contract. So my experience in Arizona has been a very good one. Since the mid-1970s we have encouraged both the tribal organizations and the Bureau of Indian Affairs to take a greater role in the investigative process, recognizing that everyone has limited resources. The FBI certainly cannot respond to the far reaches of all of the reservation countries and respond to all of the activities that are of a Federal nature on them. We have a particular concept in Arizona which we call a team approach, that—unfortunately—there is enough crime to go around for everyone, and therefore the greater the participation, the greater the team effort and the better the prosecution.

I will say that I am concerned about a couple of issues. One is where the political subdivisions or the governing bodies interfere with the functioning of the police department, where some incident occurred as we had yesterday, or on other occasions where it has occurred with the Navajo. Certainly, recently the turmoil on the Tohono O'odham reservation, where they had a tremendous police department down there—they do. They're very professional. Our witnesses are excellent police officers. Our judges like them. Our juries like them. They work well with the prosecutors. It's a very good experience. But what happened was that when the police department had to take on a very delicate case involving a relative of a tribal official, the next thing we know is that the Police Chief has been discharged and the whole investigation is disrupted. That's not an effective way to do that.

So we would ask that the mechanism for certifying tribal organizations under the 638 contract be revised a little bit to ensure the integrity of the police officers in their operations because we think it is fundamental to the protection of the citizens in the presentation of orderly and competent evidence in a court of law, so that you can show that the defendant committed the crime and that they are guilty beyond a reasonable doubt.

I share Mr. Hogen's concerns about turning investigative files over wholesale. In many instances the tribal governments, through the tribal police organizations, often have adequate police information to prosecute the individual, because the Bureau of Indian Affairs and/or the FBI a lot of times incorporate those police records into their own reports. In our district we have a policy where, when a case is declined for prosecution or we defer it back to tribal court, it is incumbent upon the Assistant U.S. Attorney to write a letter outlining the reasons for declination and/or deferral because

sometimes we believe that the matter is better handled and there is a better sense of justice in tribal court than there would be if we processed the case through Federal District Court.

Does that always happen? Have there been mistakes? I'm certain that there are. We do that as a matter of course, but that is not tantamount to turning over investigative reports. As Mr. Hogen has pointed out, many times those investigative reports have confidential information in them, confidential informant information, information that is not admissible evidence but which may lead to admissible evidence. And where there may have been a declination, there may not be a viable statute under which to prosecute. Various people take those reports and they then become the tool for a vendetta against those who would come across and give information. We are worried about that. We don't want to see the free flow of information stopped.

So again, I would caution that, in my experience, I don't think that's a good procedure. More often, I find that those problems—where there's a declination and no one seems to have information—when people have this problem, it's a failure to pick up the telephone or write a letter or call and say, "What happened to this case?" If they call, we respond to those inquiries. When you're processing, as we do, about 1,000 or 1,500 cases per year, something may get lost in the system somewhere. It's inevitable, but we do the best we can. We always tell people when we talk about our LECC activities, "Pick up the telephone and call because oftentimes, if you do, you're going to get a response. If you don't, call me personally." I know Ed Reina is here, the Chief of Police in Salt River. When there is a problem out there, he never hesitates to call me up personally. If I'm not available, he always gets a phone call by me, and he knows that he will get a response to his inquiries.

Last, Senator McCain, there was an issue that you raised early on in your opening remarks, and we've discussed this at Flagstaff and in front of the House committee at Marana and at other opportunities, and that is this concept of how we're dealing with the growing problem of non-Indians who commit crimes within Indian country where there is an Indian victim. As you know, the Supreme Court recently denied certiorari in the Conrad Flint case involving Arizona, where the Arizona courts had held that there is exclusive jurisdiction in the United States to prosecute all non-Indians who commit crimes within Indian country. We have suggested that maybe it is time to review that, to give the State organizations, and possibly the tribal governments, some sort of concurrent jurisdiction over these cases.

I will tell you that the tribal governments are not enthusiastic about that concept, but many of our county attorneys and some of our tribal governments are in fact enthusiastic. The point that I have made on numerous occasions is that there is a minor—what I call "misdemeanor prosecution," or shoplifting, or domestic violence situations—that do not amount to a felony crime. There has got to be a court to be able to resolve those, because I do not believe that shoplifting and domestic relations cases are best solved in a Federal District Court which oftentimes sits 200 or 300 miles away from where the incident occurred. I believe that's something whose time has come, and in view of 1990 experiences, you may

wish to review that situation. I know that you have had some encouragement in that area from the county attorneys in our jurisdiction.

With that I would end my comments and respond to any questions that you may have.

The CHAIRMAN. Thank you.

Mr. Mills.

STATEMENT OF WALTER R. MILLS, ACTING DEPUTY TO THE ASSISTANT SECRETARY, INDIAN AFFAIRS (OPERATIONS), DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. MILLS. Thank you, Mr. Chairman. It is a pleasure to be here this morning to discuss H.R. 498.

We strongly recommend enactment of H.R. 498, with amendments that meet our concerns.

I have provided a written statement for the record; I would like to summarize that.

The Bureau of Indian Affairs employs approximately 400 law enforcement officers who provide law enforcement to some 163 Indian reservations or areas in 23 States. In addition, various tribes employ nearly 900 law enforcement officers, of whom 700 are commissioned by BIA as Special Deputies.

Under this bill, the Secretary would be authorized to charge an officer or an employee of the Department of the Interior with law enforcement responsibilities which include those duties which are standard for most uniformed police. This bill would also authorize the Secretary to enter into agreements with other law enforcement agencies to assist in enforcement in Indian country of Federal or tribal law when the tribe has authorized the Secretary to do so.

We do have serious concerns with section 3(d) of H.R. 498 which provides that criminal investigation, the investigative branch, would not be subject to contracting by Indian tribes under the Indian Self-Determination Act. We recognize that the quality of criminal investigative work is important to the successful prosecution of crimes in Indian country by U.S. Attorneys. A tribe should not be precluded from performing such investigations if the tribe can establish that its program can provide adequate law enforcement protection to a reservation community.

Bill language adequate to provide flexibility for contracting criminal investigative work to Indian tribes, if agreed to by the Secretary in consultation with the Attorney General, would clarify this provision and allow both agencies to consider such measures, when appropriate.

We would be willing to work with the committee, tribal governments, and the Justice Department to develop appropriate language.

Also, I would like to make some comments regarding line authority. We do have some concerns in that area. Historically, the agency superintendents and the Area Directors have been in charge of direction for all programs, including law enforcement, that happen within those reservations in that area. I personally feel that it would be difficult at times to stay on top of the situations as they occur; for instance, the incident that just happened at

Navajo. The Area Director there was on top of the situation, working with the tribe, and he gave us full information. I'm not so sure that this would happen if the line authority would change. It's a major change in the Bureau of Indian Affairs, and I think it's going to take some time to get that situation changed.

On the contracting issue, again, I believe that my experience with the tribes that I have dealt with in the past is that they have done an excellent job. I think with us working together with all the agencies, we can enhance that. I know the Assistant Secretary is willing to really put forth that effort to see to it that we upgrade law enforcement and the criminal investigation division with the tribes and with the Bureau of Indian Affairs.

With that, I will be happy to answer any questions that you may have, Mr. Chairman.

[Prepared statement of Mr. Mills appears in appendix.]

The CHAIRMAN. Gentlemen, I thank you very much.

Before I proceed with my questions I would like to make a few observations.

I have been in the Congress for approximately 30 years. This year more than any other year has been the year for law and order. The high incidence of crime has been a major concern of all Members of Congress. Every poll-taking organization has advised us that the matter of highest concern to all Americans has been crime and drug-related crimes.

As a result, the three words that we hear most often in the halls of Congress have been "law and order." However, I have learned that whenever you strengthen the authority of the police arm, there is something that results, a price to pay. You diminish certain rights of people who live under the jurisdiction of this police authority.

In the case we are looking at today there is another element; not just the people, but the sovereign entities that we call tribes and nations. If one should look at this measure rather casually, it is of a type of legislation that should almost automatically pass, without discussion or opposition. Now, who is against giving greater clarity to the authority of police officers? But I think that, in reading the bill very carefully, one could conclude that giving greater clarity is also the equivalent of giving greater authority.

My first question would be, by giving greater authority to police officers, contract or otherwise, are we diminishing the sovereignty of Indian nations and tribes? Or are we reducing the rights of Indian people?

Mr. MCNAMEE. I think that's one of those delicate balance questions because under 638, in my opinion, we are to a certain extent increasing the sovereignty of the Indian nations in making their own police departments more responsive to the citizens of those communities. We are dealing with vast reaches—often isolated and remote locations—where there is a great need for responsive action. We have found out in many of our prosecutions—for instance, in another very unfortunate circumstance, our office has convicted nine teachers within Indian country who are serial molestors. Without the cooperation of the greater police presence, both tribal, BIA, and FBI, it would not have been possible to bring

those cases. And yet, we feel we've carried out a great service to those communities.

So I don't believe that, as modified, this will be a reduction of sovereignty. I believe that the citizens will be offered a greater measure of law enforcement for the citizens who really and truly need it.

The CHAIRMAN. I listened very carefully to your testimony. You spoke of this line of authority, that you wanted a police force that was separate and not subject to the influence of tribal offices and authorities. You spoke of a case where a relative of some high tribal officer was involved and the difficulties involved in that.

I think this is a picture you find with any sovereign. We have different types of sovereigns in the United States: the city sovereign, the county sovereign, the State sovereign. All these sovereigns have some level of police power, whether it is just to tag someone for overparking, or executing someone for a capital crime.

We in the United States, in granting sovereignty to these lesser sovereign groups, whether they be the city, the county, or the State, have been very careful not to diminish these police powers. Oftentimes it is tempting, when you hear of a certain county where the sheriff is corrupt and the mayor is corrupt—we don't take the drastic step of saying, "Okay, we are taking over; the FBI is going to run the whole show." However, this bill in essence says, "You will have a police department on Indian reservations, and the Chief of Police, in the final essence, will be in Washington." That is where the line of authority goes.

Mr. MCNAMEE. Well, Senator, I think that that's true of most Federal law enforcement officers. The Director of the FBI, the Director of the Bureau of Indian Affairs, the head of Immigration are all here in Washington, D.C., because when you're dealing with the application of Federal law you need some sort of uniformity. You need some sort of standard operating procedures that are not left to each individual area. I would be less than candid if I were to say that there are not many political subdivisions where there is a corrupt local sheriff or that the city or county manager can lean on someone to get an investigation quashed. But no one likes that. I'm happy to say that no one has ever leaned on me to close an investigation. We have been independent, and that's what I want, a measure of independence, whether it be through the BIA or through the tribal police departments, that independence to do their jobs, because I believe the United States has a special trust responsibility to these people which we cannot delegate down and say, "Okay, you're like the local police department anywhere else."

My feeling is that I want them to have the opportunity to be safe in their communities at a much higher level and not have to reinvent the wheel to start them off at the same level as we started many other police departments. That's why I'm concerned.

The CHAIRMAN. What I am trying to point out is that, yes, you do have a measure of independence, and I am pleased that no one has ever leaned on you; but before you got your title, in all likelihood you had to be cleared by your two Senators or your Representatives. There was some input by the people involved.

The Indians will not have any input as to who is going to be in this line of authority. We have an input.

Senator MCCAIN. Maybe Mr. Hogen, since he has kind of a unique perspective—being a Native American and also a U.S. Attorney—can add something to this.

Mr. HOGEN. Thank you, sir.

The CHAIRMAN. Before I call on you, I don't want it to be interpreted as my being opposed to this measure. I just want to be very careful because throughout my tenure as chairman of this committee, what I have done as zealously as I can is to see to it that the sovereignty of Indians is not diminished. Oftentimes, although unintentionally, we may do that. I don't want this to be one of those situations.

Please.

Mr. HOGEN. That is a very important and significant concern, and I share it. Sovereignty has to be maintained to the extent that it exists, and if and when we are going to see Indian nations be completely self-sufficient and independent, that has to be preserved.

Unfortunately we haven't reached that level yet. Without the flow of Federal dollars to Indian country we would see more suffering and so forth than we see now. In the Indian country that I am familiar with, the basic problems are poverty and despair and alcoholism, and that's responsible for the crime that we have. We have a very high crime rate in Indian country, in South Dakota and the midwest. I think we prosecute more homicides in the District of South Dakota than perhaps any other Federal district because we have the Indian jurisdiction.

Before we're going to see the problems of alcoholism, poverty, the economic depression there, and so forth resolved, I think we're going to have to provide a safe environment for those things to improve. In Indian country—and I'm going to get a little philosophical here, I guess—more so than in any other sector of our economy or society, we see the local government being "the only game in town," so to speak. Whoever is in charge of tribal government pretty much has control of all the purse strings and all the jobs and all the opportunity. So when politics get involved, in Indian country perhaps more than any other communities, they are playing for keeps out there.

In some places, while it might make some difference to one who his county commissioners are or who his mayor is, when you live on an Indian reservation it makes a great deal of difference to you who the tribal chairman is and who the tribal councilmen are because they are going to control so much of the economy and so much of the opportunity.

When that situation develops it is very important that you have a law enforcement system in which you can have absolute faith that they have integrity, that they have independence, and that they can be responsible. Every Indian reservation in the United States, if they so chose under Public Law 93-638, could enter into a contract with the Bureau of Indian Affairs to have their police department and their criminal investigation service run tribally. Under those circumstances they would have tribal control, but a large number of those reservations have elected not to do that. I think that a reason for that is that they know that under this system, with Federal law enforcement there, there is going to be

some integrity and there is going to be some independence that might not otherwise exist.

I hope that the day comes when every reservation has complete local control and complete responsibility for funding and supervising the law enforcement. But that day is not here; it certainly is not here with respect to many of the reservations we have in South Dakota. I think we have to maintain this as a goal and say to ourselves as we consider or pass legislation like this, "Sovereignty is going to be maintained and sovereignty is going to be important." But, as Mr. McNamee stated, this is a Federal law enforcement agency we are talking about, and I think that we need to have and maintain this law enforcement line authority and be very sensitive to the needs of the communities as it is administered. But we're going to have a continuation of problems that exist now unless we make it a professional law enforcement organization, in my view.

The CHAIRMAN. Am I correct to assume that it is your view that this bill does not diminish the sovereignty of Indian nations?

Mr. HOGEN. I think it does not, perhaps with the exception of the provision now existing that would prohibit contracting for criminal investigation.

I was an advocate for getting more control over contracting for criminal investigation, and at one time subscribed to the theory that the best way to do that would be to say by statute, "Don't let tribes contract for criminal investigation," because I had some really dismal experiences in my district under those circumstances. I am now satisfied that the Bureau of Indian Affairs can and will administratively see that they won't contract unless and until a thorough and professional job of criminal investigation can be done.

So with taking that out, I have no concern about diminishing tribal sovereignty with this legislation.

The CHAIRMAN. I can understand a situation where the Indian tribe feels compelled to delegate this sovereign authority of its police powers to some other group because they don't have the wherewithal and the manpower to do so. But would this bill deny an Indian tribe that feels that they have the capacity, the talent, the technical support to do their police work, from doing so?

Mr. HOGEN. I think not. It would merely formalize the law enforcement functions that the Federal Government is now performing out there, and leaves open the option of contracting for law enforcement.

Mr. MCNAMEE. Senator, may I augment that for just a minute?

I believe the bill as drafted, if it would eliminate the ability to operate under 638—that concern would be much greater. What we have advocated here is taking that provision out or modifying that to allow the tribes to go ahead with 638 contracting. So I think there may have been some confusion in our response in answer to your question, because I think we're mixing metaphors. I apologize for that.

The CHAIRMAN. I thank you.

Senator McCain?

Senator MCCAIN. Thank you, Mr. Chairman.

In other words, you would support the text of the bill and you believe it does not represent an erosion of tribal sovereignty as

long as there were a provision in the bill which would allow some contracting out under 638. Is that a correct assessment, Mr. Hogen?

Mr. HOGEN. Yes; I would agree with that, Senator.

Senator MCCAIN. Thank you.

Mr. Mills, when is BIA going to have a fully computerized criminal recordkeeping system? As you know, it was originally scheduled to be completed in the spring of 1989.

Mr. MILLS. Senator, I will have to get back to you on that, but the last briefing I had on that, indicated it had been put back some. It will be approximately another 3 to 6 months. I know that we had some funding issues, and that is being worked on.

Senator MCCAIN. Thank you.

[Information to be supplied follows:]

The Integrated Police/Law Enforcement Managment System (IMPLMS) is in the process of being tested prior to nationwide certification and usage by BIA law enforcement offices in a production environment. Testing by each area is progressing as data communications connectivity is completed for the respective areas. A nationwide test is anticipated within the next 60 days.

Delays have been encountered by IMPLMS in the implementation process due to the following:

1. Funding issues had to be resolved at the program level during FY 1989.
2. Data communication connectivity delays with long distance and regional bell operating companies and private communication companies, i.e., Navajo Communication Company (NCC).
3. Delivery and installation delays with third party data communication equipment.
4. Data communication protocol problem with third party manufacturer and contractor furnished hardware.

Senator MCCAIN. Just one more final statement; this panel has taken a long time, but I think that's understandable.

In my dealings with the tribes, Mr. Hogen, one of their biggest complaints is their lack of ability to enforce the law when non-Indians come on the reservations and commit crimes. When we have a situation such as exists at the Salt River Pima-Maricopa community, where they are virtually surrounded by a large metropolitan area, and in some cases some unscrupulous citizens view that reservation as a dumping ground for that waste and refuse—they literally find themselves powerless to do anything about it.

Does this legislation assist them in getting redress from this situation?

Mr. HOGEN. Only to the extent that there are some local governments that say, "We won't enter into a cross-deputization agreement with Bureau of Indian Affairs officers or tribal officers because we question their statutory basis for the law enforcement business in the first place." But this—and I think intentionally—this legislation was designed not to tamper with jurisdictions, so to speak.

Now, certainly, that's not to say that there aren't problems in the jurisdictional area, but this legislation was deliberately crafted not to change that situation. So I can't say that those concerns will be absolved if this legislation is enacted.

Mr. MCNAMEE. Senator, may I add something to that?

There are what they call "victimless crimes." I'm not sure that that's an apt expression, but the dumping of toxic waste and the selling of drugs are often viewed as victimless crimes. I don't share

that denomination at all; there are definite victims in the dumping of toxic wastes. But those cases where they occur within the confines of a reservation by non-Indians can be prosecuted in State court because they are "victimless crimes." They do not fall within the meaning of the Conrad Flint case in Arizona.

As a matter of fact, I met with the representatives of the intertribal governments and talked about this very topic not very long ago, how we want reports of dumping of these wastes. I've talked to Ed Reina about it, also. We are going to have a portion of our upcoming LECC conference, which is generally attended by over 300 law enforcement officers, set aside to deal with these very topics since we are concerned about the environment and we are concerned with people abusing not only Indian lands but, certainly in Arizona, our large National Park areas and Forest lands with this exact type of activity.

Senator MCCAIN. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Gentlemen, I thank you very much.

Because of the complexity of this measure I hope that we may be able to submit to all three of you questions for your responses. Thank you.

Our second panel is a very important one. We have the following: The Chief Judge of the Tohono O'odham judiciary of Sells, Arizona, the Honorable Hilda Manuel; the acting Chief of Police of the Navajo Nation, Window Rock, Arizona, Major George John; the Attorney General of the Navajo Nation Department of Justice, Window Rock, Arizona, Mr. Herb Yazzie; and the Chief of the Law Enforcement Program of the Salt River Indian community of Phoenix, Mr. Ed Reina.

May I first call upon Judge Manuel.

STATEMENT OF HON. HILDA MANUEL, CHIEF JUDGE, TOHONO O'ODHAM JUDICIARY, SELLS, AZ

Judge MANUEL. Thank you, Mr. Chairman. I have submitted written testimony for the record, as well as some supplemental information on the Tohono O'odham Police Department.

The CHAIRMAN. I would like to assure all of the witnesses that prepared statements submitted to the committee will be made part of the record in total.

Judge MANUEL. Thank you.

What I would like to do is just review a couple of the areas that I addressed in my testimony and then answer any questions that the committee members might have.

I initially became involved with the law enforcement issue in 1981 when I was working with the Tohono O'odham Nation at that time, giving legal advice and working with grants and contracting on 638 contracts. A decision was made at that time to contract for law enforcement functions, including the criminal investigative functions.

We went through a long review process with both tribal officials and Bureau of Indian Affairs representatives at the area and the Washington level, reviewing exactly what the tribe wanted to do with the law enforcement program. One of the reasons the tribe de-

cided to contract and take over law enforcement was because of the opinion voiced by many community members and people who were directly involved with law enforcement, either as victims or witnesses or people who had complaints about particular criminal activity in their communities, that the law enforcement program or the officers, did not appear to know what they were doing. They just didn't seem to have the basic understanding and training to give confidence to the victims and to complainants that they would properly investigate and determine what was appropriate in their cases.

The very first thing we did was to ensure that adequate training and education requirements be placed in the contract and that we adhere to those training and education requirements very stringently. We looked at the Arizona State training requirements, ALETA, the academy that is presently utilized by a majority of law enforcement agencies in Arizona, and compared the curriculum with that which the Indian Police Academy was utilizing at that time, which was located in Brigham City, Utah. By looking at that we determined that it would be more advantageous for us to utilize the Arizona Law Enforcement Training Academy and require our police recruits to enroll and successfully complete the ALETA training. Initially we graduated three people. We reached an agreement with the Training Academy in Tucson, Arizona that they would reserve for us at least two spots in each class that they began during the year.

I think that has been the greatest benefit for us because it has enabled our police officers not only to receive training that is far superior, in my opinion, to the basic training program that the Indian Police Academy offers, although I have not recently seen the new curriculum that has been revised by the new director of the academy, Dan Brheninger, in Marana. But it has enabled our police officers to enforce State law within the reservation boundaries. Like most reservations, we have a State highway that runs right through the reservation. We have sufficient tourist attractions to attract a large number of non-Indians to the reservation.

State certification has enabled our Police Department to cite non-Indians into the court of the local Justice of the Peace or into the municipal court, and it has enabled and enhanced a better working relationship with the surrounding law enforcement agencies. The Tohono O'odham Police Department is a member of several task forces, the membership of which consist of several law enforcement agencies within southern Arizona. Our tribal police officers are commissioned by the Bureau of Indian Affairs as Federal officers and they can enforce Federal violations of the law if necessary.

So as far as I am concerned, that was probably the best move that the tribe made, to require that the State training standards be utilized.

The second thing I would like to address is this question of line authority. It is true that within the Bureau's systems, where the tribe does not contract for law enforcement, there is a lack of a unified command structure. The local area special agent officer who works at the agency level often reports to the superintendent, who does not usually have law enforcement background, although

in our case at the Papago Agency our superintendent is a former law enforcement person. I believe he worked with a Federal law enforcement agency before he became a superintendent, working with the Bureau. But I think that is a unique situation. When that occurs, when you have that kind of a setup, it is possible—and I have seen, when the Bureau of Indian Affairs operated the program on Tohono O'odham—that you would have a contracting officer or COR, as they are called, who knew nothing about law enforcement issues or needs, having direct influence and say over contracting matters that affect law enforcement. So it is a problem.

As far as the line authority affecting a tribally-operated program, I don't believe that it would have that much influence or that it would apply unless, of course, a tribal program was structured in the same manner as the Bureau's law enforcement programs are typically structured. But I don't believe that would have any effect. I do strongly support, if any legislation is passed, clarifying and defining the Bureau's law enforcement program, powers, and authorities, that there be specific line authority authorization defining and requiring an autonomous command structure, headed by law enforcement personnel.

In my testimony, without going into any detail, I did talk a little bit about the declination problem and the FBI response problem. Time after time I have heard about this from different reservations that I have worked with. Fortunately for us, the Tohono O'odham Nation, I think as a direct result of the agreement that we have with the U.S. Attorney where our criminal investigators initiate and conduct and conclude all investigations of major crimes, with the exception of homicide—although it has been our experience in working with our FBI agent out of Tucson, that he does not even come on the homicide cases other than to ensure that all the information that the U.S. Attorney will need has in fact been collected. We have not had the problem of the high declination rates that I have heard complained of by other tribes. I am familiar in particular with one or two tribes in Arizona. We don't have the problem with the FBI response time being delayed and slow because all of our investigations are initiated and conducted by our own criminal investigators.

So we really are in a unique situation. We are not in a position to complain about those problems, but I did address that issue in my testimony, just making notes of some of the reasons that those things may occur.

My favorite topic which I mention every chance I get is the funding issue which, I'm sure you know, is something that is very important to the successful operation of any kind of program. Law enforcement has traditionally been a very low priority with the Bureau of Indian Affairs, I think largely because the Bureau is a social service-type agency and as such, funding for law enforcement has really been secondary to other programs that have been considered more central to the Bureau's overall mission.

H.R. 498 did not authorize any new funding other than the pay comparability area, thereby making it difficult to improve the quality of law enforcement services within Indian country. I believe that in order for both tribally-and Bureau-run law enforcement programs to achieve maximum professionalism, there need to be

adequate resources, both funds nd personnel. Therefore I will request that some consideration be given to the issue of funding.

The contract thing is, of course, the biggest objection that we would have—the prohibition against contracting that is contained in H.R. 498, and if any similar provision were to be placed in any legislation on the Senate side, I indicated in my testimony that the Tohono O'odham Nation does strongly object to that, for the simple reason that we have been contracting for criminal investigative functions since 1982. At the time that the tribe made the decision to contract for all of law enforcement, patrol and criminal investigations, we had to receive the approval of the Assistant Secretary because the position of the Bureau at the time was that criminal investigation was not a contractible function. We went through the process of administrative appeals and were successful, resulting in the Assistant Secretary determining that the tribe could legally contract for criminal investigative functions.

We would be opposed to any provision that would either prohibit us from continuing to carry out that function, or that would prohibit any tribes who desire and who are capable of carrying out the functions of criminal investigations to be able to do that in the future.

Thank you.

[Prepared statement of Judge Manuel, and additional materials submitted for the record, appears in appendix.]

The CHAIRMAN. Thank you very much, Judge Manuel.

Major John.

STATEMENT OF MAJOR GEORGE JOHN, ACTING CHIEF OF POLICE, NAVAJO NATION, WINDOW ROCK, AZ

Major JOHN. Thank you, Honorable Chairman and members of the committee. At this time I would like to defer the testimony on behalf of the Navajo Nation to our Attorney General, Mr. Herb Yazzie.

The CHAIRMAN. Mr. Yazzie.

STATEMENT OF HERB YAZZIE, ATTORNEY GENERAL, NAVAJO NATION DEPARTMENT OF JUSTICE, WINDOW ROCK, AZ

Mr. YAZZIE. Thank you, honorable members of the Senate Select Committee on Indian Affairs.

I wish to ask the panel—I know you are all interested, by the comments made earlier, in the situation on the Navajo Nation. If you prefer, we can give you a factual report of the situation and then go into my testimony.

The CHAIRMAN. The tragedy that occurred in your nation is of immediate interest to all of us. So if you are able to advise us on what happened, we welcome you, sir.

Mr. YAZZIE. Thank you.

You have all heard about the civil disturbance on the Navajo Nation yesterday. The Major will give you a factual report on the situation. We give you this report because we are aware of your interest in and concern for the Navajo Nation.

Prior to that report I just want to state, as the Attorney General, that the actions last night were instigated by a few individuals

with personal interests who have shown a propensity not to comply with tribal law and tribal court orders. The civil disturbance was fueled by a rumor that the United States Attorney had dismissed or cleared the charges against Peter MacDonald, Sr., and was also fueled by the action of Mr. MacDonald himself, issuing a so-called "executive order" directing the former police chief to reassume control of the Nation's police force. This is all contrary and in direct violation of tribal court orders.

At this time I would have the Major give the factual report.

Major JOHN. Thank you.

Basically what happened is this. Around 6 o'clock yesterday afternoon there was a mob consisting of MacDonald supporters, numbering around 150 to 200 individuals, who were armed with 2 by 4s and baseball bats who moved on the Administration/Finance Building in Window Rock, Arizona. In the process, a handful of Navajo police officers responded to the scene to control the crowd that was coming in. One of the supervisors on the scene, while attempting to negotiate and communicate with the leaders of the group, was taken by the crowd, handcuffed, his weapon taken away, and a rope tied around his legs, and he was dragged around by the crowd for a period of time.

In the process of rescuing this officer, additional Navajo police officers responded. They were met with resistance by the mob. The mob moved in on the officers and a confrontation, consisting of a scuffle, occurred between the mob and the officers, and another officer's weapon was taken away. It was at this time that one of the individuals in the crowd fired a shot at a police sergeant, requiring the sergeant to return fire, shooting the individual, who was later pronounced dead at the local Public Health Service hospital. The victim was a 50-year-old Indian male. The report that we have right now is that the weapon that was used was the weapon of one of the officers, that was initially taken away from the supervisor on the scene.

At this time the mob moved in on the Administration/Finance Building and attacked the officers who were attempting to secure the building. Another individual, a 26-year-old Indian male, was shot. This individual was shot as he was ready to hit an officer with a 2 by 4. The officer had been knocked down to the ground by the crowd. This individual was later also pronounced dead at the Public Health Service hospital in Gallup, New Mexico.

At this point, because of the crowd's attempt to move in on the Administration/Finance Building, one of the officers fired a shotgun. Based on information we have received, four additional individuals were hit by the shotgun blast. At this time two of those individuals are in critical condition at the local Public Health Service hospital.

Based on preliminary information we have received, it appears that the crowd's intentions were to move in on the Administration/Finance Building, because once they had broken into the building by shattering the plate glass door into the facility, they were seen removing some documents. It is our belief at this time that some of those documents are in the form of blank travel checks.

The latest information that we have, as I indicated earlier, is that two individuals have died of gunshot wounds; nine officers

were injured; and several police vehicles were damaged. According to the latest estimate of the situation, it is our estimate that the situation is under control. We have asked for assistance from the Bureau of Indian Affairs and we have assistance in the form of six criminal investigators, who are on the scene. The Federal Bureau of Investigation was notified upon the death of one of the individuals last night, and as of this morning they have not responded to initiate the investigation.

Mr. YAZZIE. Thank you.

Once again, these events demonstrate the need—and it hits at the heart of our discussion here—for quicker response by the Federal Government to the needs and the requests of the Navajo Nation. Perhaps the events of last night would not have happened if the Federal response, in terms of investigation and prosecution of the lawbreakers, had been implemented sooner.

That is the report that we wish to give. If you have any questions, we would be happy to answer them, or I will go into my testimony on the legislation.

The CHAIRMAN. Please proceed with your testimony.

Mr. YAZZIE. Before going into my testimony, if I may, I would like to introduce three members of the Navajo Tribal Council who are here with us: Mr. George Herrera, Mr. Wallace Tsosie—Mr. Tsosie is the Chairman of the Public Safety Committee of the Navajo Tribal Council; these two gentlemen, here—and Mr. Nelson Thompson, who is with us, also from the Tribal Council.

The CHAIRMAN. Gentlemen, welcome.

Mr. YAZZIE. I would like to commence the testimony for the Navajo Nation by giving you a little bit of the history of law enforcement for the Nation. It is a department within the Navajo Division of Public Safety. The department has primary responsibility for police, detention, and criminal investigation functions and activities on the Navajo reservation itself and the adjoining Navajo country.

Since January 1959, the Navajo Nation has operated the "law and order" or police operations and detention programs, initially as programs funded by the tribal government itself. In October 1976 the Navajo Nation contracted the law enforcement and detention programs from the Bureau of Indian Affairs under Public Law 93–638. In January 1989, after 13 years of developing experience and confidence through this contracting process, we felt prepared to assume further law enforcement responsibility. As a result, we contracted with BIA for the criminal investigation function, which we are presently fulfilling.

H.R. 498 proposes to exempt the investigative function of the BIA Division of Law Enforcement Services from the contracting requirements of the Indian Self-Determination Act. We emphasize today that the Navajo Nation stands strongly opposed to this provision. The exemption of such a basic function of the Navajo Nation from the 638 requirement degrades the sovereignty of our government, ignores economic realities, and disregards the progress and potential of our law enforcement system.

This proposed legislation represents a frontal attack to the sovereign powers of the Navajo Nation. It comes at a critical phase for the tribe. The Navajo Nation's ability to prudently and effectively

exercise its sovereign powers, including enforcement of laws, has never been more evident than it has been in the last six months. Through the trials and reforms of our recent troubled period, the Navajo Nation has proven its integrity for self-governance.

At this point I would mention, in response to a comment by Federal officials earlier, that it is the Navajo Nation's position that the integrity of the Nation's police force has always been there, and it has proven itself.

During this time, the just and competent enforcement of the law by the Navajo Nation's own people has been vital to the restoration of order and sovereignty for the tribe.

The Navajo Nation has undertaken other 638 contracts, and it has proven itself under those contracts—such as social services, substance abuse, education, and vital statistics. The amendments to the act which were passed last October gave further evidence of the Federal Government's belief in the importance of Indian nations caring for their own people. The removal of the criminal investigative functions from 638 will create a greater presence of the Bureau of Indian Affairs in Indian country. This directly contradicts the intent of Congress in passing and amending the Indian Self-Determination Act.

The exemption provided by the proposed law also ignores economic realities facing the Federal Government, as well as the economic potential of law enforcement programs in Indian country. The budget for FBI law enforcement activities on Indian reservations has been reduced annually. The BIA budget for law enforcement activities has continually been confronted by budget reductions. The U.S. Attorney's Office budget has also suffered. Current estimates forecast similar and larger cuts due to the fierce economic pressures confronting the Congress. During an era of such economic limitations it is ill-advised to shift the burden for law enforcement in Indian country back to these Federal agencies.

In the midst of these budget cuts, the Navajo Nation has proudly shouldered the responsibility for law enforcement programs. Since taking over the criminal investigation component of law enforcement services on January 1, 1989, the Navajo Department of Law Enforcement has dedicated three times the workforce as had been provided by the Bureau of Indian Affairs. We have witnessed an improvement in the law enforcement services provided to our people in these past few months, and we look forward to the opportunity to continue to improve these services through further training and experience.

The judicial system of both governments is better served when the procedural trail from the commission of the crime to the courthouse is tread by the same law enforcement agent. The previous bifurcated system, whereby the Navajo Police Department as the agency of first response and the BIA would later take over the case, proved burdensome and inefficient. In a land where geographic distances are great and the crime rate is increasing with the population, intelligent use of resources is critical. Waste cannot be afforded.

The exemption of 638 requirements also disregards the progress made by the Navajo Nation. We feel that this progress has primarily been the result of the cultural sensitivity of Navajo law enforce-

ment officials for their own people. The importance of this sensitivity and understanding of both the Navajo language and tradition cannot be overestimated, especially in a discipline as delicate as criminal investigation. Despite the fact that a portion of the Navajo population is bilingual, many Navajos speak only their native tongue and are unable to communicate with English-speaking BIA officers. Young women who have been molested are less reticent to tell their stories to officers who speak their own language. Old men who have herded sheep or created silverwork all their lives are less intimidated when questioned by those who understand their cultural guidelines.

One example of the importance of this cultural understanding and sensitivity occurred, as I am sure you are aware, in December 1987 when two of our police officers were murdered in a remote section of the Nation. The Federal Bureau of Investigation sent a team of their investigators to the area to work on the case. The area residents who were privy to the events surrounding the incident were resistant to supplying the needed information to the Federal outsiders. The diligent efforts of the Navajo Department of Law Enforcement criminal investigators who assisted in the case proved to be the link which resulted in the conviction of the murderers. The case was solved and justice was served because the Navajo officers understood the subtleties of communication in such a delicate situation.

In addition, the U.S. Attorneys have shown their increasing confidence in the abilities of the Navajo criminal investigators. Since 1982 tribal investigators, by agreement with the U.S. Attorneys, have conducted all investigations of vehicular homicide cases in Navajo country. This partnership has a proven record of success which is based upon a spirit of increasing trust and cooperation between the Navajo Nation and the U.S. Attorneys in the Federal prosecution of those cases.

I would like to conclude my remarks by telling you myself just how serious the Navajo Nation is about law enforcement in Navajo country. As Navajos, we traditionally have placed great emphasis on the welfare and protection of our families and communities. We can never lose sight of the fact that the life and well-being of our families is dependent upon the continued success of our efforts. No responsibility can be more important than this.

I therefore urge you to reject the provisions of H.R. 498 which exempt the investigative function of the BIA Division of Law Enforcement Services from the contracting requirements of the Indian Self-Determination Act.

Last, as a comment on some of the earlier comments, I would say that if there are any modifications of the proposed legislation where standards are to be set by the Federal Government, at a minimum we urge the Congress to ensure that the Navajo Nation and all other tribal governments be consulted about those provisions, rules, and regulations prior to the promulgation of those regulations.

Thank you.

[Prepared statement of Mr. Yazzie appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Yazzie.

May I now call on Chief Reina.

STATEMENT OF ED REINA, JR., CHIEF, LAW ENFORCEMENT PROGRAM, SALT RIVER INDIAN COMMUNITY, PHOENIX, AZ

Mr. REINA. Thank you, Chairman Inouye, Senator McCain, members of the committee. I am Ed Reina, Jr. I am Chief of Police and a member of the Salt River Pima-Maricopa Indian community. I appreciate the opportunity to be here this morning. I represent my community and also the 19 Indian communities of the Inter-Tribal Council of Arizona. I wish to submit written comments directly from the Inter-Tribal Council.

The Salt River Pima-Maricopa Indian community has contracted for law enforcement services with the Bureau of Indian Affairs since 1967, over 20 years, and since the early 1980s has assumed criminal investigation functions normally delegated to the FBI or the Bureau of Indian Affairs. The result is that we have strengthened our department, we have enhanced relationships with our neighbors and non-Indian counterparts, which has ultimately benefited all the people we serve, Indian and non-Indian.

We support the act in part and feel it is necessary, but there are concerns with the section which states that the criminal investigation function "shall not be subject to contracting under the Indian Self-Determination Act."

Not only is this in direct conflict with the Indian Self-Determination Act, but it also closes the door on any tribe that may want to develop its own criminal investigation function.

Indian country is plagued by alcoholism, high unemployment, and endless varieties of social and economic problems. There needs to be control returned to our communities to instill hope that these problems can be overcome, not a taking away of control.

It is apparent that the section on noncontractibility is directed toward removing another area of control from tribal governments. Whether the loss is real or not, there remains the perception that there will be no control over serious crimes in the community. In a very real sense, this adds another stone to the mountain of dominance exerted by the Bureau of Indian Affairs and results in a weakening of the esteem of the tribal communities.

Options should be left to the tribes. Although I speak for several tribes, each tribe is unique, as unique as its language. I urge the committee to recognize this and to leave the door open for a tribe that may want to develop a criminal investigation function, while also providing the alternative for a tribe to use the services of the Bureau of Indian Affairs. I also suggest that the Bureau of Indian Affairs provide technical assistance to a tribe that may be developing a criminal investigation function.

There have been numerous studies and reports generated on law enforcement in Indian country over the years that we have talked about today, and continue to talk about, such as the American Indian Court Judges Association report in 1974, the Department of Justice Task Force on Indian Matters report in 1975, the American Indian Policy Review Commission report in 1976, and the report of the United States Commission on Civil Rights in 1981. Throughout these years little has been done to address the problems that each of these reports have consistently identified and corroborated.

I commend Chairman Inouye, Senator McCain, and the committee for your efforts. I am encouraged by the action that you have taken and the interest you have in resolving the problems of law enforcement in Indian country.

Thank you.

[Prepared statement of Mr. Reina appears in appendix:]

The CHAIRMAN. Thank you very much.

All of the witnesses are from Arizona, so if I may, I would like to yield to the Senator from Arizona for initial questioning.

Senator MCCAIN. Thank you, Mr. Chairman, for your usual courtesy and consideration.

I have to go in a few minutes because I will be returning to Arizona, I guess before you will. I appreciate your being here. Mr. Yazzie and Major John, I am sorry that you are here under these very tragic circumstances surrounding the events of yesterday. I know that you will be returning as soon as possible.

I also know that we have received assurances from the BIA that any available law enforcement agents from Albuquerque and other places will be sent at your request, if needed.

Mr. Yazzie, do you feel comfortable that you are receiving enough assistance at this time?

Mr. YAZZIE. Yes. The requests have been made through Major John's office, and we would be comfortable with the assurance that was relayed this morning.

Senator MCCAIN. Major John, do you feel that you will be receiving sufficient assistance? Or is it too early to tell?

Major JOHN. It's too early to tell because in the past, when we did ask for Federal assistance, we were kind of blocked by the U.S. Attorney's Office here in Washington, where apparently the Bureau of Indian Affairs would not respond to our request until the Department of Justice people gave their approval based on some agreement that was made between those agencies. But if the people who were speaking on behalf of the Department of Justice are—they have made a statement that they are willing to provide assistance to us, then I feel confident that they will.

Senator MCCAIN. Well, we would appreciate it very much if you are not receiving the assistance that you feel is necessary to maintain peace on your reservation, if you would inform the Chairman and me—and I'm sure Senator DeConcini as well—I'm sure that we would be more than eager to provide whatever assistance we could.

I believe, from talking with Mr. Eddie Brown this morning, that he is very well aware of the situation and intends to provide whatever assistance you need.

Chief Reina, before I go, maybe for the record and for the benefit of the Chairman—who, by the way, has visited our State on several occasions to visit the Indian reservations in Arizona, for which we're very grateful—please describe the unique situation of the Salt River reservation where there exists this hazardous waste dumping and other crimes by non-Indians are far more pronounced than perhaps any other reservation in American, in my view.

Mr. REINA. Thank you, Senator McCain.

Mr. Chairman, the situation—the problem as it has been described was not so much a problem until the recent Flint case came

out of Arizona. We were able to prosecute non-Indians because of our State certification and our training.

We have had various problems in our community that still went unresolved when, on occasion, a Justice of the Peace would not accept a certain violation, saying that it should have been handled in a tribal court—things such as dumping. On one case, we would handle it civilly in our court, and also criminally in the State court. When we tried that; it was partially successful. Now, with the recent Flint case, our jurisdiction over non-Indians for prosecution over misdemeanor offenses is again limited. The State will not accept cases where an Indian is the victim.

We have convenience stores on the reservation; one is a Circle K and another is a market run by an Indian. If a non-Indian shoplifts in that Circle K, we can prosecute him. If the same person shoplifts in the convenience market run by the Indian, there's nothing we can do about it.

Senator MCCAIN. How many non-Indians pass through your reservation in a day?

Mr. REINA. Our traffic is estimated to be 60,000 vehicles per day. These are just people going through. We have a recreation area, two rivers, a six-screen theater, a community college. Also, we have recently opened a shopping mall which is probably one of the largest in the valley.

Our problems are increasing. We are handling them the best way we can, but we would appreciate any assistance we can get from this committee.

Senator MCCAIN. Thank you, Mr. Chairman.

Thank you very much for being here. We appreciate your testimony and we will do everything we can to help. Thank you.

The CHAIRMAN. Chief Reina, you just indicated that if I shoplifted—I am a non-Indian—in a store owned by an Indian, you have no authority over me?

Mr. REINA. The only authority we would have would be to remove you from the reservation. Otherwise, there is no forum for prosecution. We may try to take it through the U.S. Attorney's Office, but there again we are limited. There are only certain crimes that can be prosecuted under Federal law, and shoplifting is not one of them, and other misdemeanor violations may not be prosecuted under Federal law.

We do have other situations where an Indian woman is married to a non-Indian. If we have a simple assault, under tribal law it is charged as domestic violence and there is a prosecution; under State law it is also domestic violence and there is prosecution; but under no law, now, can we prosecute that non-Indian for a misdemeanor assault on his Indian spouse.

The CHAIRMAN. Now, this bill before us doesn't change that picture, does it?

Mr. REINA. No, it doesn't.

The CHAIRMAN. Have you people gotten together to suggest legislation that might bring about a change, where you can exercise greater sovereignty?

Mr. REINA. Mr. Chairman, as Mr. McNamee has mentioned, we have met with the Inter-Tribal Council and his office and discussed this problem. Legislation is probably the most reasonable answer to

that, in the form of two things: either concurrent jurisdiction with the State where we would be able to prosecute that which is done in the State, or a more logical answer, which is the return of prosecution of non-Indians to the tribal courts.

The CHAIRMAN. If I went into your reservation and I dumped toxic material on reservation land, what can you do?

Mr. REINA. Depending on the extent of damage, we could prosecute in the State system——

The CHAIRMAN. PCBs?

Mr. REINA. There are Federal laws that do cover toxic waste. But our problem is more of a person who brings out a truckload of garbage from his back yard and dumps it, that type of situation.

The CHAIRMAN. I can, with complete disregard, go into your reservation and dump rubbish?

Mr. REINA. Just about, Mr. Chairman.

The CHAIRMAN. So your reservation has become a dumping ground for all non-Indians in your area?

Mr. REINA. Mr. Chairman, although it is a common problem within the State everywhere, including Indian country, it's just that we cannot prosecute them as easily as we can if someone is across the road in the city of Mesa or Tempe or Scottsdale. So in effect yes, it is a dumping ground.

The CHAIRMAN. And is that the situation in your area, in the Navajo Nation?

Mr. YAZZIE. There are problems with the lack of Federal laws regarding tribal prosecution of misdemeanors and certain Federal crimes, and there is also definitely the lack of Federal personnel to investigate and prosecute those crimes. But as the representative from Arizona just stated, the logical answer is to deal on a government-to-government relationship between the Federal Government and the tribal government to improve the enforcement of laws, and not to treat one government as either the dumping ground for waste or its criminals, but to see how we can jointly prosecute those people.

The CHAIRMAN. All three members of the first panel mentioned line of authority. Judge Manuel expressed grave reservations about the line of authority provisions in this bill.

What about you, Chief, and Attorney General?

Mr. YAZZIE. The line of authority question—in the first instance, I believe it creates another level of bureaucracy which may not be needed. The last thing that we need in this government-to-government relationship that we're trying to establish and maintain is having to answer to someone back in D.C. as to how to react to some local incident. That's the fear we have.

If the local government—which is the Navajo Nation government, or whatever tribal government—were able to respond quickly, which in most cases they can, and coordinate this effort with Federal authorities with the tribal government being regarded as the supervising authority, I see no problem, if that relationship can be established. The best response is almost always by the local government.

The CHAIRMAN. Chief Reina.

Mr. REINA. Mr. Chairman, the concept of line authority from a law enforcement perspective is very necessary. Again, each tribe

has to be looked at as being a unique entity. Each tribe may have a different opinion. At Salt River, we don't have a problem at all with that because we have operated our police department for over 20 years, and the tribe itself has assumed a lot of the responsibilities that BIA has had over the past years. In fact, we have our own tribal government.

But there are problems with the present system. Our neighbors have a Bureau of Indian Affairs police force. I have had questions where I have called the Phoenix Area Office, thinking that this person had control over that agency, and I have been dissatisfied because he could do nothing about it. I had to go back to the superintendent, and after trying to explain my situation, he really didn't understand because he was not a law enforcement person.

So I can see where it's necessary. Again, you have to look at each tribe as being unique in the way they perceive that system.

The CHAIRMAN. Major John.

Major JOHN. I think in response to line of authority, we did have a similar problem with the present conflict that is occurring. When we initially asked for Federal assistance, at the beginning of this political turmoil, the request was made to the area director; but the number of people we have received in terms of Federal assistance—we only received 18 Federal officers to assist our department. Part of that problem was because under the Federal system, the Federal officers who are stationed on the various Indian reservations are subject to the supervision of the agency superintendent. It was up to the agency superintendent to determine how many Federal officers were going to be dispatched to the Navajo Nation to assist us. So the provisions and terms of the line of authority within H.R. 498, from the law enforcement perspective as far as Chief Reina had alluded to, we don't see that as a problem. As a matter of fact, it would kind of make our job a lot easier from the tribal law enforcement perspective in terms of who we go to that has authority to assist us in any type of law enforcement situation.

Also, in response to your question concerning the problem with non-Indians, we do have a problem. One of the problems that fueled the situation that occurred yesterday dealt with a non-Indian. The Navajo Tribal Council two years ago, the Navajo Tribal Government under Peter MacDonald, appointed a non-Indian police chief. This former police chief was the one that created the problems as far as law enforcement was concerned during the onset of the political turmoil. We have attempted to seek some type of charges against him through the State system, but the State system did not want to deal with this individual because not only was he a non-Indian, but the victim was the Navajo Tribal Government.

We then turned to the United States Government to assist us in seeking some kind of prosecution against that individual. Because of the offense that this individual committed being less serious, they were reluctant to pursue it through the Federal court system.

So as you mentioned, I think that Federal legislation would be needed in order to change the authority that Indian tribes have over non-Indians, but that's in the form of separate legislation.

The CHAIRMAN. If this bill passes in the form presented to you today, will it diminish or erode the sovereignty of your nations?

Major JOHN. From the law enforcement perspective it only addresses the authority that the Bureau of Indian Affairs officers have in terms of carrying out their law enforcement functions. From the law enforcement perspective, since the Navajo Nation does contract law enforcement, we feel that the bill as written will not have an impact on our government because it only addresses the Bureau of Indian Affairs. The only impact that we feel the bill has on the Navajo Nation government or any Indian tribe is the language contained in the prohibition against contracting of the criminal investigation function under 638.

The CHAIRMAN. Judge?

Judge MANUEL. I would agree with that. I think that is the critical concern that the Tohono O'odham Nation has, that it would very effectively undermine and take away the tribe's right to contract for law enforcement criminal investigations. In that sense, it does affect a great deal the tribe's sovereignty to make a decision to provide law enforcement services for its own members.

The CHAIRMAN. Am I correct to assume that if we cure that provision, you would favor the passage of this bill?

Judge MANUEL. Yes.

The CHAIRMAN. Attorney General?

Mr. YAZZIE. Yes.

The CHAIRMAN. All right. I thank you all very much.

To the Attorney General of the Navajo Nation, are you elected or appointed?

Mr. YAZZIE. Sir, I am appointed by the Navajo Tribal Council, the legislative body of the Navajo government.

The CHAIRMAN. And who appoints Major John?

Mr. YAZZIE. The appointment is made by the Chief Executive Officer of the Executive Branch of the Navajo government, the Chairman of the Navajo Tribal Council.

The CHAIRMAN. And Judge Manuel, are you elected or appointed?

Judge MANUEL. Appointed.

The CHAIRMAN. By the council?

Judge MANUEL. By the council, after a recommendation by the Judiciary Committee.

The CHAIRMAN. For a limited term?

Judge MANUEL. Yes; 6 years.

The CHAIRMAN. And Chief?

Mr. REINA. I was recommended by the Chairman 10 years ago, and the council approved that appointment. But I am still subject to the personnel due process system under the tribe.

The CHAIRMAN. And the tribal council can remove all of you?

Mr. YAZZIE. Yes; it can.

Mr. REINA. In my situation they cannot. They have to have due process and a ballot. I mean, it wouldn't be just a whim, if a different chairman came in and asked for my removal. I do have recourses to appeal that.

The CHAIRMAN. Thank you very much.

Our third panel consists of the following: The Chairman of the Colville Legislative Committee of the Colville Environmental Quality Commission, Colville Confederated Tribes of Washington, Mr. Gene Joseph; the Administrator, Law and Justice Committee, Col-

ville Confederated Tribes, Mr. Don Bleakney; the President of the Isleta Pueblo Tribal Council of the Isleta Pueblo of New Mexico, the Honorable Alvino Lucero; and a Tribal Council Member of the Isleta Pueblo Tribal Council of New Mexico, Mr. Juan Abeita.

Chairman Joseph.

STATEMENT OF GENE JOSEPH, CHAIRMAN, COLVILLE LEGISLATIVE COMMITTEE; COLVILLE ENVIRONMENTAL QUALITY COMMISSION, COLVILLE CONFEDERATED TRIBES, NESPELEM, WA

Mr. JOSEPH. Thank you, Mr. Chairman. We appreciate the opportunity to be here today before the committee on this very important piece of legislation.

My name is Gene Joseph. I am the Chairman of our tribe's Legislative Committee. With me today as a co-presenter is Don Bleakney. Don Bleakney is under a 638 contract with the Bureau of Indian Affairs to be the chief administrator for our tribal law and justice system, which handles the tribal police, tribal court, and legal services department. In view of his 15-plus years experience with BIA law enforcement and tribal law enforcement, I am going to defer to him and answer any questions later, and allow him to do a highlight of our statement which we have submitted.

The CHAIRMAN. Mr. Bleakney.

[Prepared statement of Mr. Joseph appears in appendix.]

STATEMENT OF DON BLEAKNEY, ADMINISTRATOR, LAW AND JUSTICE COMMITTEE, COLVILLE CONFEDERATED TRIBES

Mr. BLEAKNEY. Thank you, Mr. Chairman. My name is Don Bleakney. I am Law and Justice Administrator for the Colville Confederated Tribes. I was hired away from the Bureau of Indian Affairs, where I worked for some 20 years. Please don't hold that against me.

We are here in opposition to portions of this bill, and apparently we are joined by several other tribes in opposition to points in the bill.

I won't elaborate on the jurisdictional problems that are faced in Indian country; you've got a whole table full of documents that certainly do a good job of outlining those difficulties. I am here to convince you that since 1986, the Colvilles have embarked on their own law enforcement programs. They do have a contract with the Bureau of Indian Affairs. They do all the investigations, all the criminal investigations, including very complex crimes. They have an open door to the U.S. Attorney in Spokane, Washington, who volunteered to submit data supporting our opposition to this bill until he was countermanded by his superiors.

We are here to stress that we feel that the most important function of the Bureau of Indian Affairs is to strengthen and support tribal government law enforcement. We feel that is fundamental, and sometimes experience tells us that we stray away from that mission.

This bill set out to strengthen a statutory authority of law enforcement officers. When we got the original bill, we had no objection to it; and then a funny thing happened on the way to Congress. Another bill was submitted and it had an addition in it, sec-

tion 3(d). That is the part that we disagree with. Section 3(d), of course, establishes the Criminal Investigations Division and it adds another layer of bureaucracy on the tribes, not answerable or accountable to local authority or direction or influence.

Then another funny thing happened. They held hearings on this bill. Where did they hold the hearings? They held the hearings in Rapid City, South Dakota and in Phoenix and in Albuquerque, none of which we were invited to attend. I question whether this concept has had adequate tribal consultation.

In some of the remarks which you heard earlier there were some not very veiled comments about the competency of tribes to run their own enforcement programs, and there were some comments about unprofessionalism. Those things bother me, because those comments, of course, are an affront to those tribes—and you've heard of several of them here today—those tribes that are capable, that are willing, and that are doing the very complex job of reservation law enforcement.

In my remarks I'm not trying to demean or insult any of the dedicated Bureau of Indian Affairs criminal investigators that are on the job out there in Indian country, and doing a fine job. But they are doing a fine job for two reasons. One, they want to be there; and two, the people want them to be there. Those are fundamental reasons.

Mr. Joseph and I are here to convince you that section 3(d) is offensive to those tribes that are doing their thing and doing it well. It is an effort to establish a national police force for Indian country that you do not need. One would question, where does the support for this type of legislation come from? My suspicion is that the support comes from those who would seek to benefit the most therefrom.

From what you've heard here, there's no question in my mind that the handwriting is on the wall. BIA investigators are an endangered species, and they should be; as tribal capabilities grow and grow there will be less and less need for them.

I think that a Criminal Investigations Division with the subsequent lines of authority is a luxury that we cannot afford in Indian country when items such as facilities and personnel and training are going unaddressed. I think that that section is bad and should be removed. If you let it become law, you are doing a disservice not only to the residents on Indian reservations, but to the non-Indian residents on Indian reservations who rely heavily on tribal law enforcement for protection.

Thank you.

The CHAIRMAN. If we deleted section 3(d), would you favor the passage of this measure?

Mr. BLEAKNEY. Once again, sir?

The CHAIRMAN. If the committee and the Congress deleted section 3(d), the section that you find offensive, would you favor the passage of the bill?

Mr. BLEAKNEY. Yes, sir. I think the basic premise of the bill is well founded and long needed, the statutory authority for law enforcement on Indian reservations.

The CHAIRMAN. Chairman Joseph, is that your view also?

Mr. JOSEPH. Our belief and our hope is that the BIA law enforcement effort, as the principal agent for the trustee, is that it is there as an adjunct or a complement to tribal government services, not as a substitute. If we modified that section or deleted it, we would be very happy to support the bill.

The CHAIRMAN. Thank you.

President Lucero.

STATEMENT OF HON. ALVINO LUCERO, PRESIDENT, ISLETA PUEBLO TRIBAL COUNCIL, ISLETA PUEBLO, NM

Mr. LUCERO. Thank you, Mr. Chairman. Honorable Chairman, members of the committee, my name is Alvino Lucero. I am President of the Isleta Tribal Council. With me also is Mr. Juan B. Abeita; he is Vice President of the Isleta Tribal Council. We are here to present testimony on behalf of the Pueblo of Isleta. Also, we brought the written testimony of the Honorable Chairman, Mr. Herman Agoyo, of the All Indian Pueblo Council. Due to prior commitments he was unable to come, but we do have his statement to be presented to you also.

The CHAIRMAN. Please be assured that all those statements will be made a part of the record.

Mr. LUCERO. Thank you, Mr. Chairman.

[Prepared statement of Mr. Agoyo appears in appendix.]

Mr. LUCERO. We represent the Pueblo of Isleta, a reservation of over 3,000 people and almost a quarter of a million acres in central New Mexico. Isleta has had an effective tribal government for many years and has dealt with all of the issues which confront local governments, Indian and non-Indian alike. Isleta has had much experience in law enforcement services through its own tribal police force, and has dealt in law enforcement, BIA police, Federal enforcement agents, and State, county, and other agents. Isleta has had a lengthy and extensive experience in law enforcement matters.

In reference to the specific legislation, H.R. 498, the Indian Law Enforcement Reform Act, Isleta would like to state its opposition to the bill for some very specific reasons.

It should first be noted that the bill apparently passed the House of Representatives without a general notice of its consideration being made known to the Indian community. Isleta, which prides itself on being aware of ongoing legislation, was uninformed that the bill was pending, much less had passed the House of Representatives. Our tribal offices had not been notified, nor had any of the BIA offices in our region. I would like to state our concern that a bill of such considerable impact could be contemplated by the House of Representatives without sufficient input from the Indian community.

These are the specific objections Isleta has to the bill:

First, the creation of a Division of Law Enforcement Services which would be independent of BIA agency superintendents or area office directors, both of whom are in direct and frequent contact with tribal officials, seems a calculated affront to Indian tribal government. Tribal officials have a more direct and overriding interest in law enforcement on the reservation than an official in

Washington, much removed from the reservation in time, distance, and—oftentimes—perspective.

Second, to center the control and flow of information in Washington, D.C. is apparently based on the dubious premise that Washington-based officials are more able and honest than officials located elsewhere.

Third, that the Secretary of Interior would enter into agreements with State or other non-Indian local governments so that law enforcement powers can be employed by those governments in Indian country is completely unacceptable. It flies in the face of the historic attitude of tribes—particularly those in non-P.L. 280 States—as to the jurisdictional integrity of tribes. Moreover, from the standpoint of a tribe, it is completely unnecessary. A tribe can issue a police commission, either limited or general, which would grant enforcement powers to any person it desires, including State police, county sheriffs, or other local law enforcement personnel. The Secretary should not be permitted to take over this function and discretion presently enjoyed by tribal governments.

Fourth, the maintenance of law and order on reservations is an integral part of the trust responsibility of the Secretary of Interior. This legislation would provide a way for the Secretary to contract away to non-Indian, non-Federal governments this obligation, the law enforcement powers. The Secretary should not be permitted to turn his back on his obligation to Indian people.

Fifth, the legislation would permit the Secretary to utilize BIA funds for the activities in this act, specifically for the creation of a special police force and contracting with non-Indian, non-Federal enforcement agencies. This would take funds from other BIA programs which vitally need continued support. The present BIA budget, which has been woefully inadequate for the last several years, would be strained even further and would deny Indian people the services to which they are legally and morally entitled.

The Pueblo of Isleta respectfully requests that this committee reject H.R. 498 and, further, that the committee invite and permit other comments from the Indian community throughout the country.

These are the comments, Mr. Chairman, of Pueblo Isleta. There are other statements that directly address this, along with a tribal council resolution that was adopted and passed by the Pueblo of Isleta.

I believe that the other comments that I have heard this morning in regard to the unfortunate situation in Navajo country—I believe that if this legislation had been in place, I believe that the Navajo Nation would have had to get their permission from Washington, D.C., whereas it was stated this morning that all they had to do was contact the area directors in Albuquerque and Phoenix and they were provided assistance.

I believe, Mr. Chairman, that these are some of the things that are not known here in D.C., and some of the remote pueblos in New Mexico have difficulty in trying to make contact in Washington D.C., whereas they know that they have an agency superintendent in the eight northern pueblos and the ten southern pueblos, and all they would have to do would be to pick up the phone and contact their agencies. I believe that the assistance is there; we

have direct contact with them. The area director is there. These are some of the things that we would like to keep intact.

Also, Mr. Chairman, there are no provisions in this legislation in creating this branch that any funds are made available to fund this branch or this agency. As I stated in my testimony, the law enforcement budget at our agency, which is a multi-tribe agency—nine pueblos under one agency—is very minimal.

The Pueblo Isleta was in the process of contracting the law enforcement program for this year, fiscal year 1989. When we took a look at the budget we found that there was inadequate money to contract, and the equipment that we were going to get was inadequate. Once we contracted, the funds available for this year would have had to be used to purchase any other equipment that was needed. The vehicles that were being given to us under the contract had 80,000 miles on them. We were told that they were ready for trade-in, but that the Bureau was not going to trade them in until Isleta took the contract.

This is why we are very concerned, Mr. Chairman, that creating another agency without adequate funds would be detrimental to the law enforcement agencies within the tribes.

[Prepared statement of Mr. Lucero appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. President.

May I call upon Mr. Abeita.

STATEMENT OF JUAN ABEITA, TRIBAL COUNCIL MEMBER, ISLETA PUEBLO, NM

Mr. ABEITA. Thank you, Mr. Chairman. I am very happy to be here, to accompany Mr. Lucero at these hearings before you, Mr. Chairman, and the committee.

I have not made a statement; however, briefly I will have to say that I appreciate Mr. Lucero's comments. The comments that were presented to you were the result of the work of the tribal council.

There are many issues that we are being faced with as far as law and order are concerned within our tribes, especially in New Mexico with all the pueblos involved. Like he mentioned, we are a multi-tribe agency, and funding for law and order has been minimal, whereby we are faced with minimal coverage as far as law and order are concerned.

The tribe itself is in the process of educating our Indian police. We have been able to provide them with the proper training in Marana, Arizona, so that they can proceed with their profession in law and order. We are able to utilize the State Police Academy and we are cross-deputizing our own people with the county and the State. This is a great help to us as far as law and order are concerned; however, the funding from Bureau of Indian Affairs for law and order is inadequate to provide us with the necessary coverage where it is needed within the nine tribes that we mentioned. If adequate funding is provided for more law and order personnel within the agency and the area, I think we would have very good coverage that would protect the lives and property of the pueblos.

The bill that has been presented to us—today is the first time I have seen the bill. I have not been able to digest what is contained in it, but from listening to the rest of the delegates from various

parts of Indian country, the creation of this new agency would be detrimental. As far as Isleta is concerned, to be able to have the necessary protection, I think it would be the agency's responsibility as far as law and order are concerned to be able to provide us with the necessary protection of life and property.

To be blunt about it, I think that creating this new agency—from what I understand, criminal investigators are separate from other law and order work that is being done by the agency—creating this agency would protect our positions, the way I see it.

In coming years the tribe will be taking over a lot of the functions of law and order. In order to protect their positions, I think that is the extent of it.

Thank you very much, Mr. Chairman.

The CHAIRMAN. I have long believed that many of the solutions made in Washington by well-meaning officials have not always worked in Indian country. So when I became Chairman about 2½ years ago, I decided to go out into Indian country to seek their advice. As a result, I have seen a good half of the 200 tribes and nations; I have seen many of the 180 villages in Alaska. In fact, I am the first Chairman ever to set foot in Oklahoma and California, in the Southwest, the Pacific Northwest, the Great Plains, and Alaska. The legislation that has been coming out of this committee has been, for the most part, the product of Indian wisdom and Indian recommendations.

I believe I speak for the Vice Chairman when I say that if this measure is to be reported from this committee, it will either delete section 3(d) or significantly modify that. As I indicated in my questioning of the first panel, the Chairman and the Vice Chairman of this committee have no desire or inclination to diminish or erode the sovereignty of Indian people. That is our promise.

I gather that if we strongly modify or delete 3(d), you would be in favor of this measure?

Mr. LUCERO. I believe that if certain sections of this bill were amended, or if section 3(d) was deleted, and perhaps further consultation with tribes took place, I believe that we would be in favor. It is awfully hard when you receive a bill one week before we present testimony.

The CHAIRMAN. I can assure you that before we go further, we will confer with all of you and other of your colleagues.

Mr. LUCERO. We appreciate that very much, Mr. Chairman, because we are interested in protecting the lives and property of all Indians throughout the Nation. I believe that we as tribal officials have that responsibility.

As was mentioned with the prior panel, I believe that more important legislation is needed for control of non-Indians on reservations. We have the same dilemma, Mr. Chairman, in the Pueblo of Isleta. We have four major highways going through our small reservation. On those four, I would say that we have 50,000 cars a day going through. We have an interstate going right through the reservation. If a crime that is not a major crime is committed in Indian country by a non-Indian, our hands are tied; we cannot do anything with them.

I think, as you mentioned, Mr. Chairman, this erodes tribal sovereignty. We are a sovereign tribe with our own government, our

own tribal constitution, with our own law and order code, but yet we cannot touch a non-Indian that breaks the law within our reservation.

And yes, Isleta Pueblo is also a dumping site for non-Indians.

The CHAIRMAN. As you may be aware, Senator McCain drafted legislation that was intended to cure the situation that you have just described. We are seriously considering adding that to this measure before we report it out.

I will now instruct the staff to draft appropriate language to that end.

I thank you very much.

Mr. LUCERO. Thank you very much, Mr. Chairman.

The CHAIRMAN. The final panel consists of the following: The United States Deputy Special Officer of the Bureau of Indian Affairs of Bellingham, Washington, Mr. R. Bruce Haley; the Vice President of the Oglala Sioux Tribe of Pine Ridge, South Dakota, Mr. Harold Salway; and the Chief of Police of the Miccosukee Tribe of Miami, Florida, Mr. Tony Zecca.

May I first call on the U.S. Deputy Special Officer, Mr. Haley?

STATEMENT OF R. BRUCE HALEY, U.S. DEPUTY SPECIAL OFFICER, BUREAU OF INDIAN AFFAIRS, BELLINGHAM, WA

Mr. HALEY. Mr. Chairman and Honorable Senators, I have presented written testimony that I would like introduced, and I would like to make a few comments and a summarization of my paper.

The CHAIRMAN. Please proceed.

Mr. HALEY. The first thing that I would like to address, I am here today representing the Lummi Indian Tribe in Bellingham, Washington as their Law and Order Administrator. As such, I administer their tribal police, their fisheries enforcement, and their courts. I am also under contract as the police administrator for the Swinomish Indian Tribe, about 40 miles south of the Lummi reservation.

This year I also have the honor to serve as General Chairman of the International Association of Chiefs of Police, Indian Law Enforcement Section, which has taken a real interest in Indian law enforcement in the United States and in Canada.

To begin with I would like to address some of the problems that you have been discussing in regard to police action over non-Indians by tribes—not only generally, but in particular in a Public Law 280 State such as Washington.

The tribes have no criminal jurisdiction in their tribal courts over non-Indians, so what we tend to see is reservations becoming havens. The county deputy sheriffs who would have primary responsibility, because of the non-taxing nature of the trust land on those reservations, do not make patrolling the Indian reservation a high priority.

There are ways that we have worked certain reservations to get relief from that situation, but it's on a county-by-county basis depending upon the sheriff's determination of how he feels about Indian reservations.

What I would like to do is talk generally for a short time about the Lummi law enforcement services and our interworkings with mutual aid agreements and memoranda of understanding.

We have a mutual aid agreement signed by Whatcom County and all the cities in the county to provide mutual assistance. It is also signed by the Lummi Indian Tribe. Under that, we do provide assistance back and forth. For example, just a few months ago we worked with the Northwest Drug Task Force in a search and seizure and arrest of non-Indians on non-trust land within the Indian reservation, where we seized approximately $800,000 worth of marijuana and miscellaneous equipment that was used for growing it. We did this under our mutual aid agreement, and with the assistance of Special Agent Mark Inouye of DEA, we are seizing that 36 acres for the tribe through the U.S. Court.

Some of the other problems that we have are that we had a non-Indian commit homicide—and arson, to cover up his crime—on trust land, which created jurisdictional confusion. So under our workings with the FBI and the county sheriff, we ended up with two FBI agents, our tribal police, the county sheriff's criminal laboratory, the elected prosecutor, and the under sheriff, pursuing this investigation.

While we were able to take that case to the County Superior Court—in the Western District of Washington, our U.S. Attorney has issued a memorandum that no non-Indian will be tried for any crime in Federal court under the Major Crimes Act—well, for this crime he received 14 months and is now back on our reservation, living there again, within the same family household where he committed the homicide.

So while we do have these mutual aid agreements, they don't always serve the best area of justice in Indian country. I think the support of a bill that would give the tribes authority over non-Indians, at least in a number of areas, is really necessary for criminal justice in Indian country. I wanted to just preface my remarks with that.

In this bill there are five areas that I would like to discuss generally, starting with the basic premise that this bill should improve law enforcement on Indian reservations and strengthen the sovereignty of Indian tribes.

The first area that I wish to talk about establishes a Criminal Investigation Branch that would reach interagency agreements with the Department of Justice and the relevant U.S. Attorneys. Our problem with this—I've been back here twice this year testifying before the Senate Select Committee on Indian Affairs on Special Investigations about the United States Attorney, particularly in the Western District of Washington, where we have submitted over 278 cases for investigation and prosecution by the United States Attorney. One case was prosecuted; three pled guilty, and therefore they were convicted; and the rest, nothing happened with.

The CHAIRMAN. Out of two hundred and——

Mr. HALEY. Out of 278 cases that we have submitted in the five years that I have been at the Lummi Indian Tribe. That's just for our tribe, one tribe.

The CHAIRMAN. Have they acknowledged receipt?

Mr. HALEY. Yes.

The CHAIRMAN. So they haven't totally ignored you?

Mr. HALEY. Well, in the last couple of years we have had a very good relationship with the FBI; that has been strengthened. When I first took over there we had problems, number one, with the BIA because in the early part of 1983 the tribe was going to contract the BIA captain's position that was located at Lummi. So the BIA reclassified that to a criminal investigator position and moved him 75 miles south to the agency office in Everett, Washington. And while the Lummi Indian Tribe provides 50 percent of the major crime violations of that agency, we do not have a criminal investigator stationed at our office or in the general vicinity. So while we have in the past had two FBI agents—who have both retired and the office is unmanned right now—we do get very good cooperation from the FBI. Mr. Pommerance, the special agent in charge of the Seattle office of the FBI, has indicated that they will be assigning at least one more agent up in Bellingham. He has been very positive in coming up and meeting with me and my tribal council to assure FBI participation in any of the cases that we request.

So going on, I feel it's really necessary that the tribes have input into these interagency agreements that are going to be made with the BIA for investigation and prosecution of cases in Indian country. At the present time, the BIA in the Western District of Washington has met with the U.S. Attorney and issued a memo, on November 17, 1988, which specifically states that Indian tribes cannot make direct case presentations to the U.S. Attorney. It also says that the Federal agencies will not investigate any property crime less than $3,000 in value, and that they will make the decisions of which crimes against persons they will investigate on a case-by-case basis.

What this does, being that there is no tribe within the Western District of Washington that has its own criminal investigator—and to my knowledge, no tribe in that Western District of Washington even has police coverage for 24 hours a day—it means that those cases will probably go uninvestigated unless they are caught at the scene, which doesn't always happen if you don't have 24-hour coverage, or unless there is a viable suspect that is named immediately.

We have had cases where we have solved the case, where we had property value more than $5,000, where we had a signed confession, and we have the United States Attorney declining to prosecute. One of our more famous cases where we have a declination from the U.S. Attorney is where the convicted murderer Willie Mack, who committed what is called the "Wamee Massacre" in Seattle, Washington, was on our reservation, attempted to abduct an Indian child at gunpoint, held a family hostage for 17 hours with them being outside the home, and the Bureau of Indian Affairs, the FBI, the county sheriff, and the Washington State Patrol all declined to respond. Tribal officers, who had no jurisdiction, had to go up and convince them to leave.

When we presented this case, with the help of the FBI—they did come up with the investigation—the United States Government declined prosecution because it was not "in the best interests of the United States Government," according to the declination letter I

have. A year later he hog-tied and executed 13 people in this "Wamee Massacre" and is now the only person that got the death sentence out of the three people that did this.

The second section that I would like to talk about is the section 3(d)(2) that you were talking about, which indicates that the Criminal Investigation Branch should not be subject to the Indian Self-Determination Act. The Lummi Tribe and the other tribes that I have spoken with, as General Chairman, are in strong opposition to this. As with some of the other experiences that I have talked about, Indian tribes under contract under 638, it specifically states in their contract that the recruitment, selection, and training requirements for the tribe shall be the same as the United States Government. So those people selected under the Indian Self-Determination Act by contract should be as good as or better than BIA personnel that would be doing the same job.

I'm not going to go much further into this because a lot of the previous speakers have spoken to this issue quite eloquently.

Section 3(d)(3)(A) makes the Criminal Investigation Branch subject only to the supervision and direction of law enforcement personnel within the BIA. I do agree that line authority is needed within the Bureau of Indian Affairs' Law Enforcement Division. We have had some disagreement on people coming up here talking about this, some saying that it should be given and some saying that it shouldn't. My feeling, as was stated by the people from the Navajo Nation, is that each agency can make its decision whether it is going to send police officers when another area or agency needs it. Therefore, each agency superintendent has that authority to say no, so you may end up with only just a few law enforcement people from the BIA when you need more. If supervision and direction is made out of the central office in Washington, you would only have to make one call to Washington to the Chief of Law Enforcement Services to get that coverage that you need, and then he can order his officers in from wherever they need to come from to provide assistance to that tribe.

I am also here to speak to section 10 that makes reporting to the tribes mandatory for Federal agencies in regards to investigation and prosecution. I feel that this section is needed by Indian tribes to maintain their sovereignty and jurisdiction. With Federal authorities declining to share their investigations, it's going to mean that there will then be a second investigation that has to occur, which means time and money, and when all that other stuff—the files, the evidence, the signed statements—may become available as a matter of course to the Indian tribe.

Now, we are fortunate in the Lummi Tribe that I deal with that the FBI does share its information. If they are going to decline prosecution, they will return that evidence back to the law enforcement service of the Lummi Tribe. But this hasn't always been so. One of the nicer things that we have is an intergovernmental agreement signed by the United States Attorney, the Lummi Indian Tribe, the State of Washington, and the county sheriff and prosecutor, for the investigation and prosecution of child abuse crimes. Other than the declinations that we get from the United States Attorney for their prosecution of these crimes, this agreement works very well; we can share information, where if it is not

prosecuted in Federal court, then it can at least be prosecuted at least in the tribal court or in the county courts.

The last area that I wish to discuss is not language that is in the bill at this time but should be addressed, and that basically says that the Bureau of Indian Affairs should be prohibited from removing law enforcement funds from their categories. I would like to cite a couple of examples where this has occurred.

For example, in the BIA Puget Sound agency, salary savings of a BIA law enforcement position was taken from law enforcement by the area office and put into another program. This money should have and could have been added to tribal law enforcement contracts within that agency that sorely needs that money so that they can assist in providing a minimum amount of protection for their Indian reservations.

The second example is that the Lummi Tribe had $100,000 added to its base amount for law enforcement by Congress in fiscal year 1988 and fiscal year 1989. The Bureau of Indian Affairs in fiscal year 1989 and fiscal year 1990 budget justifications to Congress removed this appropriation with no justification provided to either the tribe or Congress.

So we feel that once money is added to the base, the Bureau of Indian Affairs should not be able to take that money away and use it for other programs that they feel may meet their priorities and not the tribe's priorities.

In summary, tribal governments are sovereign nations. In the past, the BIA enforced most of the tribal laws. Since the enactment of Public Law 93-638, tribes have assumed increasing management and control of their justice systems. Tribes should be given every possible resource, including access to criminal investigator contracting under Public Law 100-472, to maintain tribal law and order on the reservations. The BIA and the FBI should serve as a special resource, to be available in case of an unmanageable situation. The tribes, however, must have the decision-making authority for law enforcement on their reservations.

I appreciate the opportunity to testify, and I am available for any questions.

[Prepared statement of Mr. Haley appears in appendix.]

The CHAIRMAN. Am I correct in assuming that if we did what I suggested we would, either delete or significantly modify 3(d), and consider the inclusion of Senator McCain's amendment that would permit greater law enforcement authority over Indians, would you favor the passage of this bill?

Mr. HALEY. With one additional thing in the area of allowing the tribes to enter and be a part of the negotiations for the intergovernmental agreements with the relevant U.S. Attorneys. Yes; I would, Senator.

The CHAIRMAN. Okay.

May I now call on Vice President Salway.

STATEMENT OF HAROLD SALWAY, VICE PRESIDENT, OGLALA SIOUX TRIBE, PINE RIDGE, S.D., ON BEHALF OF PAUL IRON CLOUD, PRESIDENT, OGLALA SIOUX TRIBE, ACCOMPANIED BY LOUIS WHIRLWIND HORSE, ASSISTANT EXECUTIVE DIRECTOR, PUBLIC SAFETY COMMISSION, OGLALA SIOUX TRIBE

Mr. SALWAY. Honorable Chairman of the Senate Select Committee, I come here today as the leader of my nation, the Oglala Lakota, which is referred to as the Oglala Sioux Tribe.

[Remarks made in native tongue.]

I extend a warm, heartfelt handshake from the bottom of my heart to each and every one of you. I come here with great concern for my people.

First, let me tell you who I am. My Indian name is Left Heron; my individual name is [in native tongue], which means to lead, to represent. My paternal great grandmother is the youngest sister of the original Chief Great Cloud, the treaty-signer. On my mother's side, I am from the Red Shirt ancestry. So I feel I have the backing of my people and my ancestors in our appeal to reaffirm our intergovernmental relationship as a sovereign nation.

I come here today to beseech you to reconsider this initiative which you would impose upon our people. We have been suffering for quite some time now, and I would like to ask you—compel you, beg you—to reconsider the bill I present testimony today against.

I come as [in native tongue], as a modern man, but I come with a sad heart to see the efforts of this bill and what it will do to denigrate what we have stabilized throughout history. I feel saddened to see this bill to the degree that it has carried itself.

I would like to implore you to realize that our social-political makeup is different from the general makeup of America. I know my native language; I know my Lakota culture; I know my Lakota religion. I practice my language; I practice my culture; I practice my religion. So I speak from the heart when I portray to you the significance of what H.R. 498 would do to my nation.

It would undermine the efforts that have been created through past leaders, and through previous interreactions amongst our nations. H.R. 498 does not allow Indian nations to implement their inherent authority as governments. It is one of the fundamental principles of a governmental system to implement law enforcement activities within the exterior boundaries of their Inidan reservations.

Our reservation is located in the southwest corner of the State of South Dakota. We have approximately 28,000 members on a land base of approximately 2 million acres. In 1976, the tribal council gave full authority to the Public Safety Commission to enforce the entire scope of law enforcement upon the Pine Ridge Inidan Reservation. In the past Oglala Sioux Tribe Public Safety Commission implemented a highway safety program which had decreased the accident rate and fatality rate as a result of automobile accidents upon the Pine Ridge Indian Reservation.

The Oglala Sioux Tribe Public Safety Commission provides to our constituents the overall services of law enforcement activities. So I come here today to ask you to consider what this bill would do to

us as a sovereign nation. And we do consider ourselves a sovereign nation.

Respectfully, sirs, I come today hoping you would reconsider this bill, and I look forward to the future for my grandchildren when I look into concerns as grave as this, for the implications it would have on them. I would like to maintain my nationhood and the future of my nationhood, and I do not believe that this bill is best for my nation.

It is one of the fundamental principles of a sovereign government to have inherent authority to govern ones own people; to allow the Bureau of Indian Affairs to take away their authority and to give it to another branch is not consistent with Federal-Indian relations.

H.R. 498, the Indian Law Enforcement Reform Act, to me appears to denigrate our stabilized form of government. I respectfully request you to reconsider the implications and impact that this bill would have on our nation.

The Public Safety Commission is more in tune with our social background, our social setting, and therefore they should be the proper to conduct criminal investigations upon the Pine Ridge Reservation.

I would like to take this time to briefly state the illusion of our relationship with the United States Government. In 1868 the treaty was developed, the Treaty of Peace. In 1889, our reservation was diminished for the taking of prior lands. In 1887, the Dawes Allotment Act drastically reduced our internal boundaries. In 1924, we were made citizens of the United States. In 1976, when we chartered the Oglala Sioux Tribe's Public Safety Commission, we were able to maintain a consistent alignment of keeping our society in balance within the systems of law and order. That's why I say that our system is tailor-made for the people, and it works best for the people. We would never consider imposing our laws, our rules, our government on a different race of people. It was not created for that purpose.

The Almighty knew what was best for us when he put us on this continent. So we have been maintaining that integrity throughout the years, and I feel I can speak from experience. I have been a law enforcement officer under the Oglala Sioux Tribe's Public Safety Commission. I have seen how the Bureau's practices were being imposed on our reservation. I have seen the crimes fluctuate. Today, I can feel comfortable in saying that we now have a better handle on implementing law enforcement activities on our reservation, to our people and for our people.

Another thing that I would like to state is that reservations are becoming a training ground for Bureau of Indian Affairs personnel. Once the Oglala Sioux Tribe's Public Safety Commission trains an officer of the law, he is employed by the Bureau in other areas. So we need to maintain those whom we train, basically; we would like to keep our own.

When I was a police officer, an incident occurred that I would like to relate to you. There was a march on our hospital in Pine Ridge, South Dakota. Just by my visible presence there at the door, we were able to deter some of my friends who were participating in the march. That impact alone showed to me that Oglala Lakota persons can better implement law enforcement among our people,

and have that respect can be reciprocal by maintaining the integrity of law enforcement.

So today, gentlemen, I beseech you to reconsider what H.R. 498 would do and the implications it would have on our nation and all other tribes; that would like to contract law and order. Not only does it undermine the sovereign status of all Indian Nations but it goes against the very heart and concept of the Indian Self-Determination Act.

Also, Your Honor, I brought our Assistant Executive Director of the Public Safety Commission. He is familiar with all the fine detailed aspects of our commission. If there are any questions? Thank you, sir.

[Prepared statement of Mr. Iron Cloud appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Vice President.

If this committee changed the bill in the way suggested by Mr. Haley, would you support passage?

Mr. SALWAY. Your Honor, with all due respect, I would like to implore you to strike the bill completely. If not, I would feel secure in accepting that for my people. We have a separate bill, Your Honor.

The CHAIRMAN. I think you had better study the bill, because the other sections call for training assistance, providing better protection for police officers—you don't object to that, do you?

Mr. SALWAY. No, sir.

The CHAIRMAN. You are objecting to 3(d)?

Mr. SALWAY. Yes, sir.

The CHAIRMAN. If we did away with that, you still would object to the bill?

Mr. SALWAY. No, sir.

The CHAIRMAN. All right. Thank you very much.

Mr. Zecca.

STATEMENT OF TONY ZECCA, CHIEF OF POLICE, MICCOSUKEE TRIBE, MIAMI, FL

Mr. ZECCA. I want to thank you, Mr. Chairman and the rest of this committee, for the opportunity to testify on behalf of the Miccosukee Tribe.

You have my written comments. My name is Tony Zecca; I have been in law enforcement for 33 years, 20 of which I spent with the New York City Police Department where I served also as a detective investigator. My last 13 years have been with the Miccosukee Tribe. I have been with their law enforcement program since 1976, when the program began as a Law Enforcement Assistance Administration project. Since 1977, when the Bureau and the tribe started contracting under Public Law 93-638, the Bureau has been supporting the police department, up until the present time.

The State of Florida, as you know, Mr. Chairman, is a 280 State. Consequently, we have multiple jurisdictions that we have to deal with on the tribe's lands. I think that the Miccosukee Tribe is faced with some different problems, even than our neighbors to the north, the Seminoles, because I believe all their lands are covered by 280. The Miccosukee Tribe has a portion of land that lies within

the Everglades National Park in which there is exclusively Federal jurisdiction on that land.

At the onset, the officers were commissioned as special officers of the Bureau of Indian Affairs under title 18, 3055 of the U.S. Code. In very short order we found out that was not adequate. We brought a serious matter to the U.S. Attorney's Office and they pointed out that even if we went to trial and got a conviction, there was no way that would stand an appeal because the language very specifically says that it is for the "enforcement and suppression of liquor traffic," and nothing else.

I urge this committee to consider doing something—which I think this bill right now does cover—in strengthening the language of that.

The tribe realized that we also had some problems on other lands in that area. For one, there is a stretch of land that lies in the center of our northern reservation and our southern reservation, the permit area, and that land belongs to the county. The tribe, because of our professional posture, was able to negotiate a contract with the county officials which granted the Miccosukee Tribe law enforcement authority concurrent authority, not only on their lands, but on lands that belong to the county which has tribal members who have camps and also businesses in that area.

I think that when you look at tribal sovereignty, that enhances the tribe's sovereignty because what the county and the State are saying is, "We recognize your professionalism and we're willing to share responsibility for lands that belong to us with you, the tribe, because you do have members living there."

The State of Florida mandates that all the tribe's police officers, both the Seminoles and the Miccosukees, meet the Florida Police standards, so that any police officer that is hired as a tribal police officer is as good and has the same training as any other police officer within the State of Florida. So the argument that the officers do not have the training or are not capable goes out the window. If you have a bad officer that doesn't work, and that can happen anyplace, you eliminate that person and you get a different person.

As far as dealing with that Federal portion of land, we were able to circumvent the problem that we faced by the tribe negotiating an agreement with the National Park Service, in which all our officers are also commissioned as U.S. Park Rangers, with law enforcement authority; and as such, they are recognized as Federal officers. That has been put to the test in Federal court a number of times and the courts have upheld that we are recognized as Federal officers.

Except for homicides—and thank God, since 1976 all the homicides that we've had to handle have been drug-related; I don't have to go into the seriousness of the drug problem in the area that we're in. Most of them were killings that were related to drugs and the victims were dumped out there. We got the assistance of the county and the FBI, with whom we work very closely. For the most part, our officers are the first on the scene, so we become a part of the investigation; however, we've got enough sense to recognize that we don't have the capability nor the manpower to be able to conduct a homicide investigation. It's quite sophisticated and sometimes it can cover several States.

But we do handle everything else. At this point, we have the law enforcement authority to handle any situation that occurs out there, be it an Indian or a non-Indian.

We also have a tribal court, and the U.S. Attorney and the State courts recognize that tribal court and find no problem at this point in turning cases over to the tribal court when they feel that tribal court can better serve the interest of justice.

I think at this point, Mr. Chairman, rather than going on and on and talking about things that have occurred, perhaps if there are any questions that I may answer, I might be able to do that and it might serve a better purpose.

[Prepared statement of Mr. Zecca appears in appendix.]

The CHAIRMAN. If the bill were amended in the way described by Mr. Haley, would you favor the passage of this bill?

Mr. ZECCA. Certainly. I really feel that the tribe should have control over its law enforcement operations, and I think that anything that circumvents that does no service to the tribe.

The CHAIRMAN. Thank you very much.

When Mr. Haley was speaking of that non-Indian who was found guilty of commission of homicide and arson to destroy the evidence of such homicide, and received a sentence of 14 months, I couldn't help but think of that Yakima Indian religious leader who was convicted of harvesting six salmon and selling that, after much urging, to an undercover agent, and received a five-year sentence for that. The value of the salmon did not come anywhere close to $3,000. They had a whole array of U.S. Attorneys against him. This man did not deny that he did that; he felt that it was part of his religion to do that. He spent nearly two years in prison, even after having a stroke, which would indicate to me that we are far away from equitable treatment and fair justice in this land.

But I just hope that this bill, with the appropriate amendments, would take one little step toward that end.

I thank all of you for your contribution today. We will be conferring with your counterparts in other tribes and other nations to get their views before we take final action.

Thank you very much. The hearing is adjourned.

[Whereupon, at 12:40 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

OPENING STATEMENT OF SENATOR JOHN MCCAIN AT THE JULY 21ST HEARING ON H.R. 498 THE INDIAN LAW ENFORCEMENT REFORM ACT

WE ARE HERE TODAY TO RECEIVE TESTIMONY ON H.R. 498, THE INDIAN LAW ENFORCEMENT REFORM ACT WHICH WAS REFERRED TO OUR COMMITTEE ON MAY 31ST. I WOULD FIRST LIKE TO RECOGNIZE AND ACKNOWLEDGE SEVERAL OF OUR DISTINGUISHED WITNESSES FROM ARIZONA: MR. STEPHEN MCNAMEE THE U.S. ATTORNEY FOR THE DISTRICT OF ARIZONA, THE HONORABLE HILDA MANUEL THE CHIEF JUDGE OF THE TOHONO O'ODHAM NATION, MR. HERB YAZZIE THE ATTORNEY GENERAL FOR THE NAVAJO NATION AND MR. ED REINA, THE CHIEF OF POLICE OF THE SALT RIVER PIMA-MARICOPA COMMUNITY. THE PURPOSE OF H.R. 498 IS TO PROVIDE CLEAR STATUTORY AUTHORITY FOR THE LAW ENFORCEMENT FUNCTIONS OF THE BUREAU OF INDIAN AFFAIRS. THE CURRENT AUTHORITIES RELIED UPON BY THE BIA FOR BIA LAW ENFORCEMENT OFFICERS TO PERFORM ROUTINE LAW ENFORCEMENT PRACTICES SUCH AS CARRYING FIREARMS, CONDUCTING SEARCHES AND SEIZURES AND EVEN MAKING ARRESTS ARE BROAD AUTHORIZATIONS UNDER THE SNYDER ACT AND GENERAL STATUTORY REFERENCES TO THE AUTHORITY TO "MAINTAIN LAW AND ORDER" ON INDIAN RESERVATIONS. THESE GENERAL REFERENCES DO NOT PRESENT EXPLICIT STATUTORY AUTHORITY AND COULD INVITE CHALLENGES TO BIA LAW ENFORCEMENT AUTHORITY IN THE COURTS.

SEVERAL INDIAN TRIBES HAVE VOICED CONCERNS REGARDING SECTION (D)(2) OF THE BILL. THIS SECTION EXEMPTS THE BRANCH OF CRIMINAL INVESTIGATIONS FROM TRIBAL CONTRACTING UNDER P.L. 93-

638. I AM ANXIOUS TO HEAR TESTIMONY AS TO WHETHER A BLANKET PROHIBITION ON TRIBALLY CONTRACTED CRIMINAL INVESTIGATIONS PROGRAMS IS NECESSARY AND HOW THIS PROHIBITION WOULD IMPACT TRIBAL LAW ENFORCEMENT PROGRAMS WHICH CURRENTLY EXERCISE THIS AUTHORITY. ANOTHER TRIBAL CONCERN IS THE DELETION OF PROVISIONS WHICH WOULD HAVE REQUIRED FEDERAL LAW ENFORCEMENT AGENCIES INVESTIGATING MAJOR CRIMES ON RESERVATIONS TO PROVIDE A COPY OF THEIR CASE FILE TO TRIBAL LAW ENFORCEMENT AUTHORITIES WHEN AN INVESTIGATION HAS BEEN TERMINATED OR A PROSECUTION DECLINED SO THAT THE TRIBE CAN PURSUE A CRIMINAL ACTION IN TRIBAL COURT FOR A VIOLATION OF TRIBAL LAW. ONE CAN UNDERSTAND THE CONCERN OF TRIBAL COMMUNITIES TO SEE THAT CRIMINAL OFFENDERS WHO HAVE COMMITTED MAJOR CRIMES ON THE RESERVATION ARE PROSECUTED, WHETHER IT IS IN THE FEDERAL COURTS OR IN THEIR OWN COURTS.

AS YOU MAY REMEMBER, I INTRODUCED A BILL IN THE 99TH CONGRESS, H.R. 4900, WHICH WOULD HAVE GRANTED CRIMINAL MISDEMEANOR JURISDICTION OVER NON-INDIANS TO THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY. THE SALT RIVER COMMUNITY AND SURROUNDING COMMUNITIES SUPPORTED THAT MEASURE TO PROVIDE AN AVENUE FOR THE COMMUNITY TO PROSECUTE MISDEMEANORS COMMITTED ON THEIR LANDS BY NON-INDIANS. OVER THE YEARS THE SALT RIVER COMMUNITY HAS BEEN FRUSTRATED BY THE INABILITY TO EFFECTIVELY PROSECUTE THESE CRIMES. THIS CREATED A SITUATION WHERE THE VIOLATIONS OF MISDEMEANOR CRIMINAL CODES FOR COMMUNITY RESIDENTS ARE NOT APPLICABLE TO NON-INDIANS WHICH RESULTED IN A SITUATION WHERE TWO CLASSES OF PEOPLE LIVE SIDE-BY-SIDE AND THE LAW ENFORCEMENT OFFICIALS CAN ONLY PROSECUTE THE INDIAN CLASS. I

HAVE HEARD A SIMILAR FRUSTRATION FROM TRIBES REGARDING THE FAILURE TO PROSECUTE TRIBAL MEMBERS WHO HAVE COMMITTED MAJOR CRIMES ON INDIAN RESERVATIONS. I AM CONSIDERING THE POSSIBILITY OF INTRODUCING AN AMENDMENT TO THIS BILL SIMILAR TO THE BILL I INTRODUCED IN THE 99TH CONGRESS IN ORDER TO ADDRESS THE CONCERNS RAISED BY THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY.

AGAIN, I WELCOME ALL OUR WITNESSES AND LOOK FORWARD TO YOUR TESTIMONY.

24-761 0 - 90 - 3

U.S. Department of Justice

Washington, D.C. 20530

STATEMENT

OF

PHILIP N. HOGEN
UNITED STATES ATTORNEY
DISTRICT OF SOUTH DAKOTA

AND

STEPHEN M. MCNAMEE
UNITED STATES ATTORNEY
DISTRICT OF ARIZONA

BEFORE

THE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

CONCERNING

H.R. 498, REGARDING BUREAU OF INDIAN AFFAIRS

LAW ENFORCEMENT IN INDIAN COUNTRY

ON

JULY 21, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS PHILIP N. HOGEN. I AM THE UNITED STATES ATTORNEY FOR THE DISTRICT OF SOUTH DAKOTA AND CHAIRMAN OF THE INDIAN AFFAIRS SUBCOMMITTEE OF THE ATTORNEY GENERAL'S ADVISORY COMMITTEE OF UNITED STATES ATTORNEYS. ACCOMPANYING ME IS STEPHEN M. MCNAMEE, THE UNITED STATES ATTORNEY FOR THE DISTRICT OF ARIZONA. HE IS ALSO A MEMBER OF THE INDIAN AFFAIRS SUBCOMMITTEE AND VICE-CHAIRMAN OF THE ADVISORY COMMITTEE.

WE APPRECIATE THE OPPORTUNITY OF APPEARING BEFORE YOU TO SHARE THE VIEWS OF THE DEPARTMENT OF JUSTICE AND THE UNITED STATES ATTORNEYS OF DISTRICTS WITH SIGNIFICANT INDIAN COUNTRY ON H.R. 498, THE INDIAN LAW ENFORCEMENT REFORM ACT. WE STRONGLY URGE THIS COMMITTEE TO REPORT FAVORABLY ON THIS BILL, WITH SOME MODIFICATION, TO THE SENATE.

H.R. 498 WILL AFFECT THE LAW ENFORCEMENT OPERATIONS OF THE BUREAU OF INDIAN AFFAIRS (BIA), WHICH, AS YOU KNOW, PLAYS A VITAL ROLE IN THE INVESTIGATION OF OFFENSES OCCURRING IN INDIAN

COUNTRY. THOSE FELONIES WHICH ARE COMMITTED BY AND AGAINST INDIANS IN INDIAN COUNTRY ARE PROSECUTED IN THE UNITED STATES DISTRICT COURTS BY MYSELF AND THE OTHER UNITED STATES ATTORNEYS IN DISTRICTS WITH INDIAN COUNTRY, AND OUR ASSISTANTS. JUST AS THE CRIMINAL JURISDICTION SITUATION IN INDIAN COUNTRY IS SOMEWHAT COMPLEX, SO IS THE ROLE AND INVOLVEMENT OF THE SEVERAL LAW ENFORCEMENT AGENCIES WITH WHOM WE UNITED STATES ATTORNEYS WORK. THAT IS, IN INDIAN COUNTRY, THE APPROPRIATE JURISDICTION FOR THE PROSECUTION OF A PARTICULAR OFFENSE MAY DEPEND ON WHERE IT WAS COMMITTED, BY WHOM IT WAS COMMITTED AND AGAINST WHOM IT WAS COMMITTED, AS WELL AS THE NATURE OF THE OFFENSE WHICH WAS COMMITTED. THE FEDERAL GOVERNMENT, THE TRIBAL GOVERNMENT, OR THE STATE GOVERNMENT MAY HAVE JURISDICTION, DEPENDING ON A NUMBER OF CIRCUMSTANCES.

THE FEDERAL BUREAU OF INVESTIGATION HAS THE AUTHORITY AND JURISDICTION TO INVESTIGATE CASES FOR PROSECUTION IN THE FEDERAL COURTS. LIKEWISE AVAILABLE FOR INVESTIGATION ARE THE CURRENT RANKS OF BUREAU OF INDIAN AFFAIRS (BIA) AGENCY SPECIAL OFFICERS, CRIMINAL INVESTIGATORS, AND TRIBAL POLICE OFFICERS. IN ADDITION, ON MANY OF OUR RESERVATIONS THE BIA HAS CONTRACTED WITH TRIBES, PURSUANT TO THE PUBLIC LAW 638 INDIAN SELF-DETERMINATION PROGRAM, FOR THE PERFORMANCE OF LAW ENFORCEMENT DUTIES, INCLUDING CRIMINAL INVESTIGATION. CONSEQUENTLY, IN A GIVEN INSTANCE, AN FBI AGENT, A BIA INVESTIGATOR, OR A TRIBAL INVESTIGATOR MAY BE AVAILABLE TO INVESTIGATE A SITUATION, PROVIDE THE UNITED STATES ATTORNEY

WITH THE REPORT, AND APPEAR AT GRAND JURY AND AT TRIAL TO PROVIDE EVIDENCE WITH RESPECT TO THE OFFENSE. MANY UNITED STATES ATTORNEYS, INCLUDING MYSELF AND MR. MCNAMEE, HAVE PROMULGATED WRITTEN GUIDELINES WHICH SUGGEST WHICH TYPES OF CASES ARE TO BE INVESTIGATED BY WHICH INVESTIGATIVE AGENCY. WHILE AN EFFORT IS BEING MADE TO BROADEN THE SCOPE OF CASES WHICH ARE HANDLED EXCLUSIVELY BY TRIBAL OR BIA INVESTIGATORS, UNITED STATES ATTORNEYS CONTINUE TO RELY ON SPECIAL AGENTS FROM THE FBI TO INVESTIGATE THE MOST SERIOUS OFFENSES OCCURRING IN INDIAN COUNTRY.

BIA LAW ENFORCEMENT IS NOT A NEW CONCEPT. IT HAS DEVELOPED ADMINISTRATIVELY OVER A LONG PERIOD OF TIME, AND ITS FUNCTION AND NEED HAVE BEEN RECOGNIZED BY CONGRESS OVER THE YEARS BY THE MANY SPECIFIC APPROPRIATIONS TO SUPPORT IT. H.R. 498 IS DESIGNED TO CLARIFY AND STRENGTHEN THE AUTHORITY FOR CERTAIN LAW ENFORCEMENT ACTIVITIES OF THE BIA. WE THEREFORE RECOMMEND THE ENACTMENT OF THIS LEGISLATION.

Explicit Statutory Authority

THE PROPOSED LEGISLATION WILL PROVIDE EXPLICIT STATUTORY AUTHORITY FOR COMMISSIONED LAW ENFORCEMENT OFFICERS OF THE DEPARTMENT OF THE INTERIOR TO CARRY FIREARMS, MAKE ARRESTS, AND CARRY OUT OTHER LAW ENFORCEMENT RESPONSIBILITIES AUTHORIZED BY THE SECRETARY OF THE INTERIOR. AT THE PRESENT TIME, EXCEPT FOR LIQUOR VIOLATIONS FOR WHICH STATUTORY AUTHORITY ALREADY EXISTS, THESE OFFICERS CARRY WEAPONS AND MAKE ARRESTS ON THE BASIS OF AUTHORITY IMPLIED FROM CONGRESSIONAL AUTHORIZATION OF THE DEPARTMENT OF THE INTERIOR TO EXPEND FUNDS FOR LAW ENFORCEMENT,

CODIFIED AT 25 U.S.C. 13, AND SIMILAR LANGUAGE IN THE ANNUAL DEPARTMENT OF THE INTERIOR APPROPRIATIONS BILLS. WE AGREE WITH THE DEPARTMENT OF THE INTERIOR THAT RELIANCE ON IMPLIED POWERS MAY PROVOKE UNNECESSARY AND COSTLY CHALLENGES TO THE VALIDITY OF THIS PRACTICE. WE NOTE WITH APPROVAL THAT SECTION 7(c) OF THE BILL AFFIRMS THAT THE ENACTMENT OF THIS LEGISLATION DOES NOT IMPLY THAT THE EXERCISE OF THESE POWERS ON THE BASIS OF IMPLIED AUTHORITY WAS NOT VALID. WE HOPE THAT THE LEGISLATIVE HISTORY WILL REFLECT THAT AS WELL.

Line Authority

SINCE ITS INCEPTION, THE INDIAN AFFAIRS SUBCOMMITTEE OF THE ATTORNEY GENERAL'S ADVISORY COMMITTEE OF UNITED STATES ATTORNEYS, HAS RECOGNIZED A NEED FOR "LINE AUTHORITY" WITHIN BIA LAW ENFORCEMENT. UNDER THE PRESENT ARRANGEMENT THERE IS NO "CHAIN OF COMMAND" WITHIN THE BIA CONSISTING SOLELY OF LAW ENFORCEMENT PERSONNEL AND MANAGERS. RATHER, AGENCY SPECIAL OFFICERS, CRIMINAL INVESTIGATORS, AND PATROLMEN AT THE AGENCY (OR INDIVIDUAL RESERVATION) LEVEL REPORT TO THE AGENCY SUPERINTENDENT, WHO IN TURN REPORTS TO AN AREA DIRECTOR. THESE SUPERINTENDENTS AND DIRECTORS NECESSARILY DEAL WITH TRIBAL GOVERNMENTS AND RESERVATION INDIANS IN A LARGE NUMBER OF AREAS, INCLUDING LAW ENFORCEMENT. WE BELIEVE THAT WITH THE INSTITUTION OF LINE AUTHORITY BY H.R. 498 UNDER WHICH INVESTIGATORS WILL REPORT TO THE AREA AND NATIONAL LEVEL THROUGH A LAW ENFORCEMENT CHAIN OF COMMAND, NEEDED LAW ENFORCEMENT INDEPENDENCE WILL RESULT, PROFESSIONALISM WILL BE

PROMOTED, AND THE INFLUENCE OF LOCAL POLITICS ON RESERVATION LAW ENFORCEMENT WILL DECREASE.

WE BELIEVE THAT ESTABLISHING "LINE AUTHORITY" WITHIN THE BIA LAW ENFORCEMENT STRUCTURE WOULD ALSO PROVIDE NEEDED STABILITY TO LAW ENFORCEMENT IN THAT AGENCY AND HELP ELIMINATE WHAT IS OFTEN SEEN AS "REVOLVING DOOR" POLICY WITH RESPECT TO SPECIAL OFFICERS AND OTHER BIA LAW ENFORCEMENT PERSONNEL. IN THIS REGARD, IT IS IMPORTANT THAT THE QUALIFICATIONS FOR BIA LAW ENFORCEMENT OFFICERS AND THEIR SALARIES AND BENEFITS BE AT A LEVEL SUFFICIENTLY HIGH TO ATTRACT AND RETAIN DEDICATED AND PROFESSIONAL LAW ENFORCEMENT OFFICERS WHO SEEK TO BUILD LAW ENFORCEMENT CAREERS WITH THAT AGENCY. SALARIES AND BENEFITS NEED TO BE COMPARABLE TO THOSE OF HIGHLY RESPECTED LAW ENFORCEMENT AGENCIES, AND, WHERE APPROPRIATE, SPECIAL ALLOWANCES NEED TO BE MADE TO INDUCE OFFICERS TO LOCATE IN THE REMOTE AND DIFFICULT LOCATIONS OF SOME INDIAN RESERVATIONS. IN THIS REGARD, IT IS EXTREMELY IMPORTANT THAT WHEN THE BIA ENTERS INTO CONTRACTS, PURSUANT TO THE INDIAN SELF-DETERMINATION ACT, THAT TRIBES LIKEWISE BE REQUIRED TO ESTABLISH COMPETITIVE PAY SCALES AND DESIGN AND OPERATE LAW ENFORCEMENT PROGRAMS WHICH ATTRACT AND RETAIN CAREER LAW ENFORCEMENT PROFESSIONALS.

H.R. 498 PROVIDES LINE AUTHORITY FOR THE NEWLY CREATED BRANCH OF CRIMINAL INVESTIGATION. WE THINK THIS IS A MAJOR IMPROVEMENT. IT IS PARTICULARLY WELCOME SINCE THESE INVESTIGATORS WILL OFTEN BE THE ONES WHO WILL BE INVESTIGATING VIOLATIONS OF FEDERAL LAW AND PRESENTING THE EVIDENCE TO THE

UNITED STATES ATTORNEYS. LINE AUTHORITY WILL ALSO PERMIT THIS SMALL AND ELITE GROUP TO BE USED FLEXIBLY WHERE AND WHEN NECESSARY.

Public Law 638 Contracting

H.R. 498 FURTHER PROVIDES THAT THE INVESTIGATIVE FUNCTION SHALL NOT BE SUBJECT TO CONTRACTING UNDER PUBLIC LAW 638. WE THINK THIS PROHIBITION SHOULD BE MODIFIED IN A MANNER CONSISTENT WITH THE AIMS OF THE INDIAN SELF-DETERMINATION ACT. CURRENTLY, PUBLIC LAW 638 REQUIRES THE SECRETARY OF THE INTERIOR TO CONTRACT WITH A TRIBE UPON ITS DEMAND TO ALLOW IT TO PERFORM A FUNCTION THE DEPARTMENT OF THE INTERIOR IS OBLIGATED TO PROVIDE, UNLESS HE OR SHE IS PREPARED TO FIND AS A MATTER OF LAW AND FACT, REVIEWABLE IN THE COURTS, THAT THE TRIBE IS INCAPABLE OF PERFORMING THE FUNCTION. A MAJOR CONCERN WE HAVE WITH PUBLIC LAW 638 CONTRACTING IS THAT IT FORCES THE SECRETARY TO SPECULATE BEFORE CONTRACTING ABOUT THE TRIBE'S ABILITY TO MEET LAW ENFORCEMENT STANDARDS OF TRAINING AND PERFORMANCE SINCE THE TRIBE MAY NOT HAVE A TRACK RECORD FOR THE INVESTIGATIVE FUNCTION, AND MAY NOT HAVE BEEN ABLE TO RECRUIT ITS PERSONNEL UNTIL THE CONTRACT IS IN PLACE.

WE THINK THE INTERESTS OF TRIBAL DEVELOPMENT AND LAW ENFORCEMENT CAN BE ACCOMMODATED BY CHANGING THE BURDEN OF PROOF. INSTEAD OF THE SECRETARY HAVING TO PROVE THAT THE TRIBE WILL NOT BE ABLE TO PERFORM, THE TRIBE SHOULD BE REQUIRED TO SATISFY THE SECRETARY THAT IT WILL BE ABLE TO DO SO. WE WOULD EXPECT THE SECRETARY TO PRESCRIBE OBJECTIVE CRITERIA BY WHICH

APPLICATIONS FOR CONTRACTS COULD BE UNIFORMLY EVALUATED TO ACHIEVE HIGH PROFESSIONAL STANDARDS AND FREEDOM FROM UNDUE INFLUENCE.

THIS RECOMMENDATION IS MADE ON THE BASIS OF THE VARIED EXPERIENCES UNITED STATES ATTORNEYS IN INDIAN COUNTRY HAVE HAD WITH ARRANGEMENTS IN WHICH TRIBES HAVE CONTRACTED FOR CRIMINAL INVESTIGATION FUNCTIONS. THERE HAVE BEEN INSTANCES WHERE TRIBAL AUTHORITIES HAVE MEDDLED WITH OR ATTEMPTED TO INFLUENCE THE ACTIVITIES OF VERY CAPABLE AND PROFESSIONAL TRIBAL POLICE. THERE HAVE BEEN SOME SUCCESSFUL DELEGATIONS OF INVESTIGATIVE FUNCTIONS WHERE THE TRIBAL OFFICERS WERE HIGHLY COMPETENT, BUT OFTEN, BECAUSE OF INSUFFICIENT RESOURCES, TRIBAL OFFICERS LACK THE NECESSARY TRAINING. THOSE THAT EXCEL ARE OFTEN QUICKLY LOST TO BETTER PAYING JOBS IN FEDERAL, STATE, OR OTHER LOCAL LAW ENFORCEMENT.

ANOTHER GREAT SHORTCOMING IN SUCH ARRANGEMENTS OCCURS WHEN THERE IS AN INADEQUATE TRANSITION PERIOD. THAT IS, IF AND WHEN A TRIBE IS GOING TO CONTRACT TO PERFORM CRIMINAL INVESTIGATIVE FUNCTIONS, THERE MUST BE A PERIOD OF "OVERLAP" SO THAT NEEDED CONTINUITY AND TRANSITION CAN OCCUR. DURING THE RECENT IMPLEMENTATION OF A CONTRACT FOR CRIMINAL INVESTIGATION SERVICES ON THE NAVAJO RESERVATION, FOR EXAMPLE, ADEQUATE PROVISION WAS NOT MADE FOR THE TRANSITION PERIOD. A "CATCH-22" SITUATION IS CREATED: THE TRIBE CANNOT OBTAIN FUNDS TO PUT ITS

FORCE IN SHAPE WHILE THE BIA IS PROVIDING THE SERVICE, AND THE BIA CANNOT CONTINUE TO SERVE ONCE THE CONTRACT HAS BEEN LET.

THERE HAVE BEEN OTHER INSTANCES WHERE CONTRACTING HAS NOT WORKED WELL. FOR EXAMPLE, A TRIBE GAVE UP ITS CONTRACT AND RELINQUISHED ENFORCEMENT AUTHORITY TO THE BIA IN THE MIDDLE OF THE CONTRACT TERM, FORCING THE BIA TO DRAW PERSONNEL FROM OTHER ASSIGNMENTS. IN ANOTHER INSTANCE, I UNDERSTAND THAT TRIBAL POLICE HAVE THREATENED TO STRIKE, WHICH WOULD LEAVE THE RESERVATION WITHOUT PROTECTION. RECENTLY, A POLITICAL DISPUTE DISRUPTED THE POLICE DEPARTMENT OF A MAJOR RESERVATION AS RIVAL CLAIMANTS TO CHAIRMANSHIP NAMED DIFFERENT INDIVIDUALS AS POLICE CHIEF. SENIOR OFFICERS WERE ARRESTING ONE ANOTHER AS JUDGES ADHERING TO THE RIVAL FACTIONS ISSUED ORDERS AND WARRANTS AGAINST THEIR OPPONENTS. ALTHOUGH THE DISPUTE WAS ULTIMATELY RESOLVED, THERE WAS AN INTERRUPTION OF THE DELIVERY OF EFFECTIVE LAW ENFORCEMENT TO THE CITIZENS OF THE RESERVATION. INTRATRIBAL DISPUTES OF THIS SORT SHOULD NOT BE ALLOWED TO AFFECT THE INVESTIGATION AND PROSECUTION OF SERIOUS FEDERAL CRIMES. DESPITE OUR CONCERNS WITH CONTRACTING, WE WOULD LIKE TO SEE THE CONTINUED ASSUMPTION OF INVESTIGATIVE RESPONSIBILITY BY TRIBAL POLICE DEPARTMENTS.

Liaison with Tribal Authorities

AS FIRST INDICATED, THE PROSECUTION OF OFFENSES OCCURRING IN INDIAN COUNTRY IS DIVIDED AMONG FEDERAL, STATE, AND TRIBAL COURTS. GENERALLY, STATE COURT PROSECUTIONS INVOLVE ONLY INSTANCES INVOLVING NON-INDIANS; THE DIVISION BETWEEN FEDERAL

AND TRIBAL COURTS IS THAT BETWEEN FELONIES, WHICH ARE PROSECUTED AT THE FEDERAL LEVEL AND MISDEMEANORS, WHICH ARE PROSECUTED AT THE TRIBAL LEVEL. AS IS TRUE IN ANY OTHER AREAS OF LAW ENFORCEMENT AND PROSECUTION, MANY CIRCUMSTANCES ARE REPORTED TO THE FELONY FEDERAL PROSECUTORS WHICH FALL INTO THAT "GRAY" AREA WHICH MIGHT APPROPRIATELY BE PROSECUTED AT EITHER THE FEDERAL FELONY OR TRIBAL MISDEMEANOR LEVEL. APPLYING ESTABLISHED FEDERAL PRINCIPLES OF PROSECUTION, AND HAVING IN MIND THE COMPETENCE, CASELOAD AND EXPERIENCE OF TRIBAL COURTS AND PENALTY AND CORRECTION REMEDIES OF TRIBAL COURT SYSTEMS, UNITED STATES ATTORNEYS WILL OFTEN DECLINE PROSECUTION WHEN WE FEEL THOSE CASES CAN MOST APPROPRIATELY BE PROSECUTED IN TRIBAL COURT. WHEN SUCH CASES ARE DECLINED FOR PROSECUTION, IT IS EXTREMELY IMPORTANT THAT DECLINATION DECISIONS BE EFFECTIVELY COMMUNICATED TO THE INVESTIGATIVE AGENCY HANDLING THE CASE AND THE TRIBAL PROSECUTORS.

A VEHICLE WHICH HAS ENHANCED THE RELATIONSHIP BETWEEN FEDERAL AND TRIBAL PROSECUTORS IS THE LAW ENFORCEMENT COORDINATING COMMITTEES (LECCS) THAT EXIST IN EACH OF OUR DISTRICTS. THESE COMMITTEES HAVE PROVIDED A FORUM FOR AN OPEN EXCHANGE BETWEEN THE PROSECUTORS AT THESE LEVELS. THROUGH THE LECCS, COOPERATION AND COMMUNICATION BETWEEN FEDERAL AND TRIBAL PROSECUTOR OFFICES HAS IMPROVED. FEDERAL PROSECUTORS ARE KEENLY AWARE THAT A CASE WHICH THEY HAVE DECLINED FOR PROSECUTION AS A FEDERAL FELONY, BUT WHICH DESERVES MISDEMEANOR PROSECUTION IN TRIBAL COURTS, CANNOT GO FORWARD UNLESS OR UNTIL

THE TRIBAL PROSECUTOR IS AWARE OF IT. JUSTICE DELAYED IN SUCH INSTANCES IS JUSTICE DENIED. FEDERAL PROSECUTORS MUST AND WILL MAKE EVERY EFFORT TO SEE THAT SUCH DECISIONS ARE REGULARLY AND EFFECTIVELY COMMUNICATED TO OUR COUNTERPARTS IN THE TRIBAL SYSTEMS.

WE BELIEVE THAT DIFFICULTIES IN COMMUNICATION CAN BE RESOLVED WITHOUT SPECIFIC LEGISLATION. FOR EXAMPLE, THE EXPERIENCE OF THE DEPARTMENT OF JUSTICE WITH ONE MAJOR TRIBE DISCLOSED THAT THE FAULT LAY WITH THE TRIBAL POLICE. FOLLOWING THE USUAL PROCEDURES, THE UNITED STATES ATTORNEY IN THAT SITUATION WOULD NOTIFY THE FBI AGENT WHO HAD PRESENTED THE CASE, WHO IN TURN WOULD NOTIFY THE LOCAL AGENCY THAT HAD CONCURRENTLY INVESTIGATIVE JURISDICTION. THE TRIBAL POLICE, HOWEVER, REPEATEDLY FAILED TO PASS THE WORD ON TO THE TRIBAL PROSECUTOR, AND CASES WERE NOT BROUGHT BY HIM IN TRIBAL COURT, OR WERE DISMISSED FOR FAILURE TO PROSECUTE PROMPTLY. THAT UNITED STATES ATTORNEY RESOLVED THE SITUATION BY ARRANGING TO HAVE THE FBI NOTIFY THE TRIBAL PROSECUTOR AS WELL AS THE TRIBAL POLICE.

WE HAVE RECEIVED DRAFT LEGISLATION VIRTUALLY IDENTICAL TO H.R. 498, EXCEPT THAT IT CONTAINS AN ADDITIONAL SECTION. THIS SECTION CONTAINS THREE SUBPARAGRAPHS. THE FIRST REQUIRES THE FBI TO REPORT TO TRIBAL AUTHORITIES THE "WITH PARTICULARITY" THE REASONS FOR DECLINING TO INITIATE, OR FOR TERMINATING, AN INVESTIGATION OF A REPORTED VIOLATION OF FEDERAL LAW IN INDIAN COUNTRY. THE SECOND PARAGRAPH REQUIRES THE UNITED STATES

ATTORNEY SIMILARLY TO REPORT ANY DECLINATION OR TERMINATION OF A PROSECUTION OF SUCH A VIOLATION. THE THIRD PARAGRAPH REQUIRES THAT THE REPORT, WHEN IT INVOLVES AN INDIAN DEFENDANT, SHALL INCLUDE "THE CASE FILE, INCLUDING EVIDENCE COLLECTED AND STATEMENTS TAKEN, WHICH MIGHT SUPPORT AN INVESTIGATION OR PROSECUTION OF A VIOLATION OF TRIBAL LAW." WE WOULD LIKE TO MAKE CLEAR THE VERY STRENUOUS OBJECTION OF THE DEPARTMENT AND THE UNITED STATES ATTORNEYS TO THE ENGRAFTING ON H.R. 498 OF SUCH A PROVISION.

OUR OBJECTION TO THE FIRST TWO PARAGRAPHS IS THAT WE FIRMLY BELIEVE THE FBI AND THE UNITED STATES ATTORNEYS SHOULD NOT BE ANSWERABLE TO TRIBAL GOVERNMENTS FOR THEIR INVESTIGATIVE AND PROSECUTIVE DECISIONS. WE SHOULD NO MORE BE ANSWERABLE TO TRIBAL GOVERNMENTS THAN WE ARE TO STATE OR LOCAL GOVERNMENTS WITHIN WHOSE JURISDICTIONS VIOLATIONS OF FEDERAL LAW HAVE ALLEGEDLY BEEN COMMITTED. OVERSIGHT OF OUR FUNCTIONS IS COMMITTED TO THE ATTORNEY GENERAL AND THE CONGRESS. CONSIDERING THE NUMBER OF REPORTS OF POSSIBLE VIOLATIONS, THE REPORTING OBLIGATIONS WOULD IMPOSE A BURDEN THAT IS WHOLLY UNWARRANTED. BOTH THE BUREAU AND THE UNITED STATES ATTORNEYS VALUE GOOD RELATIONS WITH TRIBAL GOVERNMENTS, PARTICULARLY WITH THEIR LAW ENFORCEMENT AUTHORITIES. WE ARE CERTAINLY READY ON A VOLUNTARY BASIS AND AS A MATTER OF COURTESY AND COMITY TO RESPOND TO SPECIFIC INQUIRIES FROM THE TRIBAL AUTHORITIES IF WE ARE IN A POSITION TO DO SO.

OUR OBJECTION TO THE THIRD PARAGRAPH IS THAT, WHILE WE ARE PREPARED TO COOPERATE WITH TRIBAL AUTHORITIES IN THEIR EFFORTS TO BRING OFFENDERS WITHIN THEIR JURISDICTION TO TRIAL, WE SHOULD NOT BE DIRECTED TO TURN OVER CASE FILES. AMONG THE REASONS ARE THE FOLLOWING:

° CASE FILES CONTAIN RAW, UNEVALUATED ALLEGATIONS, OFTEN WITHOUT ANY FOUNDATION AND FREQUENTLY MALICIOUSLY GENERATED. THE PUBLIC INTEREST IS NOT SERVED BY GIVING THEM FURTHER CIRCULATION, AND UNNECESSARY INVASIONS OF PRIVACY WOULD ENSUE.

° CASE FILES CONTAIN THE IDENTITIES OF CONFIDENTIAL INFORMANTS WHOSE USEFULNESS, AND VERY LIVES, MIGHT BE ENDANGERED BY REVELATION.

° CASE FILES CONTAIN GRAND JURY MATERIAL TO WHICH THE LAW ACCORDS THE HIGHEST DEGREE OF CONFIDENTIALITY. NORMALLY IT IS NOT DISCLOSABLE WITHOUT A COURT ORDER WHICH IS GRANTED ONLY AFTER STRINGENT REQUIREMENTS ARE MET.

° CASE FILES MAY REVEAL THAT CASES HAVE BEEN DROPPED TO CONCEAL ONGOING INVESTIGATIONS OR IN RETURN FOR COOPERATION. DISCLOSURE WILL FRUSTRATE THE FEDERAL EFFORT.

ENACTMENT OF PROPOSED SECTION 10 IS FRAUGHT WITH DANGER FOR FEDERAL LAW ENFORCEMENT AND THE SAFETY AND PRIVACY INTERESTS OF COOPERATING CITIZENS. THE COST IS NOT JUSTIFIED BY ANY MARGINAL ADVANTAGE TO THE INDIAN TRIBES. INDEED, THE PROPOSAL IS SO OBJECTIONABLE THAT ITS INCLUSION IN H.R. 498 MIGHT OUTWEIGH THE BENEFITS THE BILL PROMISES TO LAW ENFORCEMENT IN INDIAN COUNTRY. WE URGE YOU TO LEAVE THESE MATTERS TO THE SOUND DISCRETION OF THE FBI AND THE UNITED STATES ATTORNEYS.

IN CONCLUSION, I BELIEVE THAT LAW ENFORCEMENT CHALLENGES IN THE INVESTIGATION AND PROSECUTION OF OFFENDERS IN INDIAN COUNTRY ARE LIKELY TO CONTINUE. THE BUREAU OF INDIAN AFFAIRS WILL CONTINUE TO PLAY A MOST IMPORTANT ROLE IN THIS PROCESS. BY FORMALIZING BIA'S LAW ENFORCEMENT AUTHORITY, ITS ROLE CAN BE EVEN MORE EFFECTIVE AND JUSTICE IN INDIAN COUNTRY CAN BE BETTER ACHIEVED. H.R. 498 AS PASSED BY THE HOUSE WILL DO MUCH TO ACCOMPLISH THAT END. WE URGE ITS ENACTMENT.

THAT CONCLUDES OUR PREPARED STATEMENT. MR. MCNAMEE AND I WOULD BE GLAD TO ADDRESS ANY QUESTIONS THAT THE COMMITTEE MAY HAVE.

STATEMENT OF WALTER R. MILLS, ACTING DEPUTY TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS (OPERATIONS), DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON H.R. 498, A BILL TO CLARIFY AND STRENGTHEN THE AUTHORITY FOR CERTAIN DEPARTMENT OF THE INTERIOR LAW ENFORCEMENT SERVICES, ACTIVITIES, AND OFFICERS IN INDIAN COUNTRY, AND FOR OTHER PURPOSES.

July 21, 1989

Good morning, Mr. Chairman and members of the Committee. It is a pleasure to be here today to discuss H.R. 498 (in the Senate), a bill to clarify and strengthen the authority for certain Department of the Interior law enforcement services, activities, and officers in Indian country, and for other purposes.

We strongly recommend enactment of H.R. 498 if amended as discussed herein.

During the last year regional hearings on law enforcement were held in Rapid City, South Dakota; Albuquerque, New Mexico; and Phoenix, Arizona. These hearings reiterated the jurisdictional problems facing law enforcement personnel in Indian country because of the sometimes conflicting interests of the various law enforcement agencies involved; and emphasized the need for explicit statutory authority for Bureau of Indian Affairs (BIA) law enforcement personnel and related services.

The BIA employs Special Officers who are assigned to Area and Agency offices. Some of the Special Officers are assigned to agencies where tribes have tribal police and tribal courts. These two forces work together at some locations and, at others, work independently of each other.

Major crimes committed in Indian country involving Indians are Federal offenses and are usually investigated by agents of the Federal Bureau of Investigation (FBI). The FBI agents generally take the lead if the crime is a homicide, serious assault, arson, robbery, kidnapping, and cases requiring accounting expertise. The BIA Special Officers are usually assigned sex crimes, burglary, and certain cases of fraud, robbery and arson. They also

assist the FBI in all other major crimes. Tribal police process crimes of lesser degrees of burglary, robbery, assaults, and tribal code violations.

The different law enforcement agencies try to cooperate with one another but there are concerns at times that can be traced to a misunderstanding of laws governing jurisdiction and legal authority. To overcome possible problems, the BIA, in cooperation with the Federal Law Enforcement Training Center, the International Association of Chiefs of Police (IACP) and the U. S. Attorneys, have combined resources to develop a training package on criminal jurisdiction in their geographic area. The training course is designed to provide off-reservation police with an understanding of the various jurisdictions and laws encountered in Indian country.

Our law enforcement officers not only work with tribal, county, and state agencies, they also work closely with other Federal agencies such as: U.S. Customs Service, U.S. Border Patrol, the Drug Enforcement Administration, Offices of the Inspector General, the Secret Service, and the Bureau of Alcohol, Tobacco and Firearms. Law enforcement in Indian country is very complex when several officers from various agencies must work together to provide law enforcement services to one reservation or location in Indian country. In many areas this complex system works. If the jurisdiction of police officers and their roles are not clear, however, the confusion or uncertainty may effect the service provided.

Cross-deputization of cooperating law enforcement agencies has been found to be an effective and efficient method of providing law enforcement services. We are strong advocates of cross-deputization because it effectively multiplies the law enforcement resources of participating agencies. It not only extends the authority to enforce laws but also requires the same qualification standards for all participating police officers. The uniform qualification standards are most important for the fair and orderly administration of justice under existing Federal law.

The BIA employs approximately 400 law enforcement officers who provide law enforcement services on some 163 Indian reservations or areas in 23 states. In addition, various tribes employ nearly 900 law enforcement officers, about 700 hundred of whom are commissioned by the BIA as Deputy Special Officers.

The BIA and tribal law enforcement personnel receive training similar to the training received by their county and state counterparts. Both BIA and tribal police are required to attend a recognized police academy within the first year of employment and thereafter are to receive at least 40 hours of in-service training each year. Criminal investigators are required to attend an eight-week basic criminal investigator school. They receive advanced training in specialized areas of investigation, e.g., narcotics and child sex abuse at other training institutions.

The authority which BIA relies upon for permitting BIA law enforcement officers to carry firearms, conduct searches, and make arrests, is based on an interpretation of the Act of November 2, 1921, (Stat. 208, 25 USC 13); 18 USC 3055; section 1 of the Act of August 1, 1914 (38 Stat. 586, 25 USC 200); and since 1939, the various Department of the Interior and Related Agencies Appropriations Acts, which have contained language such as: "For maintaining law and order on Indian reservations..." While those laws provide statutory recognition of the BIA's law enforcement functions, they do not provide clearly defined and comprehensive authorities. As a result, BIA law enforcement officers risk having their authority challenged in court and being held liable for "unauthorized" law enforcement actions.

Only four states (Nevada, Oregon, New Mexico, and North Carolina) statutorily confer complete law enforcement on BIA and tribal officers. That is one of the reasons the enactment of H.R. 498 is of vital interest to us. It is designed to clarify and strengthen the authority for certain BIA law enforcement services, activities, and officers in Indian country.

Under H.R. 498, the Secretary would be authorized to charge an officer or employee of the Department of the Interior with law enforcement responsibilities which may include: (1) carrying firearms; (2) serving warrants issued under the laws of the United States or of an Indian tribe if authorized by the tribe; (3) making certain arrests without a warrant for offenses committed in Indian country; (4) offering and paying a reward for services or information assisting in the detection or investigation of an offense committed in Indian country, or in the arrest of an offender against the United States; (5) administering an oath, affirmation, or affidavit; (6) wearing a prescribed uniform and badge or carrying prescribed credentials; (7) performing other related law enforcement duties; and (8) when requested, assisting a Federal, tribal, state or local law enforcement agency in the enforcement of the laws or regulations they enforce or administer.

H.R. 498 does not alter or reduce the civil or criminal jurisdiction of an Indian tribe, state or political subdivision or agency. It also prohibits the Secretary from using non-federal agency personnel if the tribe who has jurisdiction over the area has, by resolution, objected to the use of that agency's personnel.

H.R. 498 would authorize the Secretary to enter into agreements for use of the personnel or facilities of a Federal, tribal, state, or other governmental agency, to assist in the enforcement in Indian country of Federal law or of tribal law when that tribe has authorized the Secretary to enforce its laws. Under these agreements, law enforcement officers of such agencies could be authorized to take any action otherwise authorized for BIA law enforcement officers. Agreements involving the enforcement of Federal law would have to meet guidelines established by the Secretary and the Attorney General.

Numerous cross-deputization agreements are now in effect between the BIA and local law enforcement agencies who share a particular geographic area. We believe the sharing of personnel and facilities resulting from such

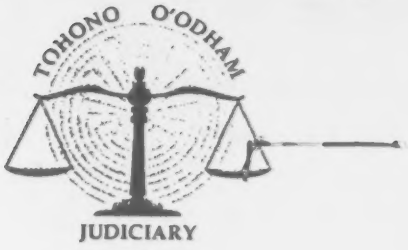
agreements produce more extensive and efficient law enforcement services. The authorities extended under H.R. 498 would remove any doubts about the BIA's law enforcement authority and its ability to obtain assistance in carrying out that authority through agreements with other agencies.

Amendments

We have concerns with subsection (d) of Section 3 of H.R. 498.

Section 3 (d) provides for the separation of the functions of criminal investigations from routine police duties. It also provides that the Criminal Investigative Branch would not be subject to contracting by Indian tribes under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.). While we recognize that the quality of criminal investigative work is important to the successful prosecution of crimes in Indian country by U.S. Attorneys, a tribe should not be precluded from performing such investigations if the tribes can establish that its program can provide adequate law enforcement protection to a reservation community. Bill language providing flexibility for contracting criminal investigative work to tribes, if agreed to by the Secretary, in consultation with the Attorney General, would clarify this provision and allow both agencies to consider such measures when appropriate. We would be willing to work with the Committee, tribal governments, and the Department of Justice to develop appropriate language.

This concludes my prepared statement. I will be happy to answer any questions you may have.



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TESTIMONY

ON H.R. 498 INDIAN LAW ENFORCEMENT REFORM ACT

BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

THE HONORABLE DANIEL INOUYE
CHAIRMAN

BY

MS. HILDA A. MANUEL
CHIEF JUDGE
TOHONO O'ODHAM JUDICIARY
SELLS, ARIZONA

WASHINGTON, D.C.
JULY 21, 1989

Testimony by Hilda A. Manuel

Mr. Chairman, Members of the Senate Select Committee on Indian Affairs, I am Hilda A. Manuel, Chief Judge of the Tohono O'odham Nation. I also serve as the Chairwoman of the Police Commission for the Tohono O'odham Police department. I am pleased to be given the opportunity to testify on H.R. 498 and the issues raised by the bill as they relate to law enforcement throughout Indian country. My testimony will focus on problems found with law enforcement services and relate how H.R. 498 seeks to address them. Included as supplemental information is an overview of Tohono O'odham Nation's law enforcement program.

The passage of legislation to clarify and define the authority of the Bureau of Indian Affairs law enforcement program has been sorely needed for many years. BIA police officers have been enforcing laws under the authority of the general Interior Appropriation Act of 1939 and on the basis of a Solicitor's Opinion M29669 Supp., dated August 1, 1939. The Agency Special Officers (ASO) who function like criminal investigators derive their authority by inference from 18 U.S.C.A. 3055, the Indian liquor traffic suppression statute.

There is no doubt that law enforcement, whether tribal or BIA, on most Indian reservations is haphazard and suffers from inattention and neglect. Citizen lack of confidence in the law enforcement system is widespread. It appears that law enforcement services often mirrors the generally confused and complex state of bureaucratic and jurisdictional disputes seen throughout Indian country. In addition to geographical isolation and the prevalence of social problems such as alcohol and drug abuse, other factors which have contributed to the difficulty of providing effective law enforcement services are:

1) Inadequate funding: law enforcement has been a low priority with the Bureau

of Indian Affairs; the Bureau is largely a social service organization and as such, funding for law enforcement has resulted as ancillary to other programs considered more central to BIA's overall mission. H.R. 498 does not authorize new funding thereby making it difficult to improve the quality of law enforcement services. The bill does provide for pay comparability with other Federal law enforcement personnel. This will greatly enhance the recruitment and retention of good people necessary for effective law enforcement services.

2) Inadequate/substandard training: The lack of an effective, professional law enforcement presence on Indian reservations can be directly attributed to inadequately trained personnel. BIA police are required to satisfy minimum training requirements. The training is provided through the BIA operated Indian Police Academy located in Marana Arizona. The basic recruit training course consists of 538 hours, 488 of which is academic, classroom training. This basic course is general and covers federal law and procedures. There are plans to revise the curriculum to focus on more specialized areas common to Indian reservations. Arizona Tribes who presently contract for law enforcement services and criminal investigative functions require training and certification in accordance with state requirements. This negates the need for cross-deputization enabling tribal police to enforce both state and tribal law if necessary. BIA trained police who desire state certification typically are required to complete additional hours (e.g. Arizona requires 80 hours on Arizona law and procedure) of training before state certification can be obtained. The BIA academy also offers 80 hours of training to tribal police officers who have received state training in federal law and procedure.

This training satisfies the contract requirement imposed on tribes who contract for law enforcement that any training comport with the requirements of 25 CFR Subchapter B.

H.R. 498 does not address training in specific terms except to authorize the Secretary to establish appropriate standards of education and training. In order to alleviate jurisdictional disputes it seems advantageous to require that local state training requirements be followed and certification obtained and maintained in accordance with State standards.

3) Line Authority: The BIA law enforcement program has been administratively handicapped by the lack of a unified command structure. H.R. 498 addresses this problem with respect to the Criminal Investigations branch. The Division of Law Enforcement Services Chief should have direct operational control over BIA police and criminal investigators. Law enforcement should not be a purely internal operation. It should be part of the criminal justice network which requires coordination with other law enforcement agencies. It requires a centralized autonomous command structure.

4) U.S. Attorney Declination/F.B.I. Response Time: There is widespread opinion that the response time by federal law enforcement officials to Indian cases is slow and uncertain. It is true that the special characteristics of the federal system make it impossible to provide the speedy handling of felony cases. But, the general populace do not understand these characteristics thus it not surprising to hear complaints that Indian cases do not receive very high priority attention. Even more serious is the complaint that Indian cases are not important enough to prosecute. There is no question that federal

prosecutive resources are limited and several factors are reviewed in determining whether or not to prosecute. Prosecution of Indian cases present a number of problems any one of which often defeat successful prosecution. For example, the majority of serious felonies are committed by Indians under the influence of alcohol. Witnesses are often unwilling to testify because of lack of memory of the details or because of relationships with the defendant. Communication may be difficult due to language or cultural peculiarities. Against these obstacles it is difficult for a federal prosecutor to justify expenditure of time and resources.

H.R. 498 offers token relief of this problem by requiring that in cases declined by federal law enforcement officials, reports be given to appropriate tribal and law enforcement officials. The report must include the case file including evidence taken to enable the Tribe to initiate tribal prosecution. This is a good beginning and will enhance a better working relationship between the federal officials and the tribes. Many tribal criminal justice officials who have had extensive day-to-day experience with these problems feel that the only long-term solution is for Tribes to provide all aspects of law enforcement services. Thus, I expected legislation like H.R. 498 to be largely technical in nature with contracting authority reserved to the Tribes. I was therefore, surprised to read the language of Section 3(d)(2) prohibiting the contracting of criminal investigation functions by Tribes. This is a radical departure from the intent of self-determination affirmed by Congress last year by P.L. 100-472, the Indian Self-Determination and Education Assistance Act Amendments of 1988.

In accordance with the policy of self-determination, the trend has been for the BIA to contract with Tribes for delivery of specified services. Three tribes in Arizona have contracted for both patrol and criminal investigative functions. The Tohono O'odham Nation is one of the three tribes. It is fair to assume that all three tribes will object strongly to the prohibition against contracting for criminal investigative functions.

The Tohono O'odham has established a good working relationship with the Federal Bureau of Investigations and the U.S. Attorney's office. Even though the FBI has the role of primary investigative agency, the Tohono O'odham police department generally conduct and present cases to the U.S. Attorney directly. The FBI has assumed a de facto supportive role and participates only in a technical assistance sense. The U.S. Attorney's office in Tucson has supported the Tohono O'odham Nation's decision to assume complete control over criminal investigations. Both the FBI and U.S. Attorney has been and is satisfied with the quality of investigations conducted by the Tohono O'odham police department.

Several reasons can be credited for the success of the Tohono O'odham law enforcement program. Certainly, the requirements of training and education are critical because they exceed those required by the Bureau of Indian Affairs. This has been an important element in conducting and providing competent investigations. Intimacy and knowledge of the tribal communities has been important. The tribal criminal investigators provide a central language and community link for federal law enforcement officials with tribal people who generally are suspicious of and uncooperative with outsiders.

The Tohono O'odham Nation is opposed to any policy which would disrupt and prohibit the Nation from continuing to perform criminal investigative functions. The Tohono O'odham Nation recommends that in accord with the general philosophy of self-determination, Congress adopt a policy of affirmatively advancing the investigative and law enforcement responsibilities by strengthening the tribal criminal justice system. As such, the Nation recommends that:

1) Tribes who are presently contracting for all law enforcement functions including criminal investigations be allowed to continue to perform such functions; and
2) Training and education standards that are comparable to or certifiable by local State law enforcement agencies be required;
3) The U.S. Attorneys be required to develop investigative and prosecutorial guidelines for use by tribal criminal investigation units, and deal with tribal law enforcement agencies as investigative agencies comparable to other federal agencies, such as U.S. Customs, Border Patrol, whose agents routinely present cases to the U.S. Attorney.
4) The long standing policy of gradual phase out of BIA law enforcement be continued limiting their role to that of providing technical assistance, training and contract administration;
5) The level of funding for tribally-contracted law enforcement programs be increased according to need;
6) The Bureau of Indian Affairs be required to develop specialized training standards peculiar to reservation investigations involving all elements of the criminal justice system at the state, federal and tribal levels.

7) The U.S. Attorney and the FBI be required to develop ways to gain greater cooperation from Indian people including conducting informational workshops on the federal prosecution system, to close the gap between the expectations of Indians and goals of federal prosecutors;

In conclusion, the Tohono O'odham Nation supports legislation which will define and clarify the authority of the Bureau of Indian Affairs Law Enforcement program. It strongly opposes legislation which seeks to prohibit or limit the right of Indian Tribes to contract for law enforcement functions, including criminal investigations.

Thank you for allowing me to present testimony.

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BACKGROUND INFORMATION

ON

TOHONO O'ODHAM POLICE DEPARTMENT

Ms. Hilda A. Manuel, Chief Judge
Tohono O'odham Judiciary
July 21, 1989

BACKGROUND INFORMATION ON
TOHONO O'ODHAM POLICE DEPARTMENT

Geographic Information: The main Tohono O'odham Reservation is located in the south central portion of Pima County with areas extending into Pinal and Maricopa counties. The land base totals approximately 2,855,874 acres and includes the non-contiguous areas of San Xavier, San Lucy and Florence. The south boundary runs over seventy miles east to west and is shared by the State of Sonora, Mexico. This close proximity to Mexico has created a number of serious law enforcement problems. The most prevalent being cattle rustling, illegal entry, narcotics trafficking, trespassing, theft and burglary. There are three Districts bordering the International boundary. Violations in any of the above listed areas are reported to the Tohono O'odham Police department. However, because of the distance to Sells, the police department headquarters, communication is difficult and thus, deployment to the area takes longer than desirable and the suspect may have already taken flight across the border. Access to the areas is also a problem because of unimproved and unpaved roads making patrol a virtual impossibility.

The topography of the entire reservation is featured by desert terrain to mountainous areas with varied desert native plants, shrubs, trees and animals. Access to and communication with remote populated areas is difficult and contribute to and enhance the occurrence of criminal violations. As indicated above, response time to emergencies is often longer than desirable and in most cases, there is little effective patrol for preventive or deterring effect. Deployment of patrol units is made as emergencies arise with 24 hour coverage being given to those areas with a high propensity for crime. All of the Districts (11 districts) of the reservation need and deserve more police service than can now be provided considering present funding levels.

Population: Three groups of people make up the population base receiving and requiring police services. The first and major group is the resident member population that is scattered over 30 villages throughout the 2,500 square miles of the reservation. Indian Health Service records and Tribal Enrollment office figures indicate a resident population of approximately 12,000 tribal members.

Included with this total is the second group of people who are non-members but who live and work on the reservation. Estimates for this group is around 3,000 people.

The third group consists of two types, one, the people who live near the reservation, in border cities, who return to the reservation periodically to participate in social events or to receive certain benefits or services, and two, those people who come to the reservation during certain seasonal times of the year when special events and celebrations are held. The total estimates for this third group is around 5,000 people. This does not include the daily influx of tourists and bingo players who come to the San Xavier District to visit the San Xavier Mission and to play bingo at the Papago Bingo hall.

The population growth of the past ten years indicates that the growth trend will continue. The enrollment process now taking place estimates that the tribal membership will increase by 5,000 bringing the total to 17,000. Furthermore, the Tribe's future economic development efforts, like the Bingo venture is likely to attract additional people. All of these factors figure significantly for the law enforcement program because added responsibilities are expected to occur. Traffic and new people increase the likelihood of crimes. With no additional manpower and equipment deterrence and prevention are impossible.

Other factors which contribute to the increase in criminal activity which may not have been significant when the planning took place in 1970's are age, income levels, health and unemployment. Tribal records indicate that a large percentage of major crimes are being committed by persons under the age of 30 years. One reason for this phenomenon given by elders is that "progress" with all its "attractions" has caused the youth to become more sophisticated in their criminal activities. Boredom and lack of recreational or constructive activities also contribute to criminal conduct.

Unemployment has also been attributed as a factor in the increase in criminal conduct. Court records show that during periods of high unemployment certain types of offenses increase. These offenses, coined as alcohol-related, included disorderly conduct, assaults, public intoxication, driving a vehicle while under the influence, and in some cases, vehicular manslaughter. There is evidence that during periods of stress and instability in personal situations alcohol consumption and drug use increase. During fiscal year 87/88 an overwhelming majority of all arrests were alcohol-related.

There appears to be a correlation also between crime and health problems. Health professionals at both the Tribal and IHS levels agree that Alcoholism is a major health problem. Statistics show that over 95% of all traffic fatalities during FY'84 were directly attributable to alcohol or drug consumption. Additionally, at least 75% of all criminal cases filed in the Tribal Court are alcohol related. All these factors impact greatly on the quality and quantity of law enforcement services.

When the Iohono O'odham Police department was established on October 01, 1982, the Tribe stated several objectives with the primary goal being that it would seek to establish a well-trained and professional police department that would carry out all law enforcement functions in an efficient, effective and responsive manner. A review of the past two years of contracting will show that the department has satisfactorily and in many instances exceeded the minimum it sought to accomplish. Constraints of the present funding base, however, has prevented the department from doing more than the minimum.

The department presently has a nucleus of young, well trained, effective police officers. They are all State certified, having completed training at the Arizona Law Enforcement Training Academy. There are too few, however, to do anything more than maintain the status quo. New programs or crime prevention, public education and information, narcotics enforcement, school resources programs, and other innovative and progressive activities are not possible under the present staffing and funding constraints.

The Tohono O'odham Nation entered into a contract under P.L. 93-638 to assume control over Law Enforcement Services, starting October 1, 1982. At the time the proposal was submitted by the Tribe, certain specific objectives were outlined. They were:

1. Development of an organizational and management plan for the efficient operation of the police department and to hire an experienced and qualified police chief and to carry out this reorganization.
2. To develop better relations between the people and the police department so that the department becomes more responsive to the needs of the people, and to improve the image of the police.

3. To establish a salary schedule for police officer recruits and personnel which will be competitive with other agencies and will attract more qualified persons.
4. To establish a recruitment program and to require an entry level examination of all applicants. To establish minimum training requirements to meet Arizona State Peace Officer Standards.
5. To improve response time and patrol service capabilities, especially for districts considered high crime areas by selective manpower distribution and the equalization of workloads.
6. To develop a reservation-wide crime prevention plan to help reduce the crime rate and to recommend to the Tribal Council the adoption of the Revised Criminal Code.
7. To centralize support functions such as record keeping, purchasing and communications.
8. To encourage cooperation and reciprocity among law enforcement agencies and departments through exchange of support personnel, specially trained officers, information and records.

The department was reorganized into three (3) separate divisions, Patrol, Investigations and Support Services. Patrol and Investigations are commanded by Lieutenants and Support Services is commanded by a lieutenant. Job descriptions were revised for all commissioned personnel. These revisions allow considerable flexibility in the assignment and utilization of personnel.

The position of the department has, from the outset, been to furnish the most effective and efficient law enforcement services to the people of the reservation. As more information becomes available, the response of the department will be directed at specific problems and the causative factors, rather than at

individual situations. The response of the people toward a well trained and effective department has been encouraging, and considerable progress has been made in the area of police community relations.

The salary scale for police personnel was recently changed to be competitive with surrounding law enforcement agencies. This is expected to greatly reduce the high attrition rate and attract and retain qualified, professional police officers.

The Tohono O'odham Police Department presently utilizes the Arizona Law Enforcement Training Academy in Tucson for the basic 480 hour course of training. After graduation, an additional 40 hours of in-service and 40 hours on the job training is required before the new officer is allowed to work by himself. An officer's training never stops, and he must learn to progress as well as progress to learn. Since the start of the contract period, officers of this department have completed in excess of 17,000 hours of training. In addition to the required training, officers are encouraged to continue their academic endeavors by attending college or university courses in their specialty field.

Although the response time and service capabilities of the department have improved, the number of commissioned officers is adequate to effectively address the law enforcement problems of the Tohono O'odham Reservation. It is impossible to furnish twenty-four hour coverage to all eleven districts with the manpower available. Since it takes a total of five (5) officers to staff one 24 hour position, simple mathematics would tell you that it would require 55 officers to adequately serve all eleven districts of the reservation. Obviously, this is impossible, and some areas and districts receive only minimal coverage, normally during the times of highest activity. Incidents occurring when an officer is

not on duty are handled on a call-out basis which often means a delay of up to two (2) hours before the officer arrives. Based on the experience developed with the present complement of patrol officers, it is felt that at least ten (10) additional officers are required to even minimally cover all districts.

A totally new and different reporting system was introduced to all reservation Law Enforcement by BIA in January, 1984. This new system necessitated a complete change over from the system being utilized by Tohono O'odham Police. Technical assistance was obtained from Phoenix Area Office and the system is now operating smoothly. In addition, we are now entering all statistical information utilizing the terminal in the Human Services Department. In the future, a computer terminal should be located at the Police Department and will provide better and more timely reporting.

The department has established good working relationships with other local, State and Federal Law Enforcement agencies. Meetings are routinely held with Pima County Sheriff's Department, Department of Public Safety, Pima County Attorney's Office, Federal Bureau of Investigation, U.S. Border Patrol, U.S. Customs Service, Pinal County Sheriff's Office, Maricopa County Sheriff's Office, Tucson Police, South Tucson Police, Casa Grande Police, U of A Police, Drug Enforcement Administration as well as the Mexican Federal Police and the Sonora State Police. In every case, it is felt that a good working relationship has been established and will continue.

At the beginning of the contract period the Police Department was organized along traditional BIA Law Enforcement lines. There was a large separation between the investigative and patrol function. This separation, both physical and philosophical, was found to be counterproductive to the stated objective of the department to provide efficient and effective law enforcement. The thought that

one function is subordinate to the other created a very poor working relationship and an inefficient operation. Each function should complement the other, they cannot operate independently. For this reason, the investigative function was relocated to the main station. This allowed for more interaction between the functions and more effective operation of both divisions.

The police department is presently staffed by 21 commissioned officers. This includes the Chief, three lieutenants, five sergeants and eighteen officers. Support personnel include five dispatchers, five detention officers, three police records clerks, one property clerk, two cooks and a secretary. There are sufficient support staff at this time to serve the patrol and investigative functions.

The police department building which includes the detention facility was constructed in 1961 and underwent major renovation in 1986/87. The renovated building is now in compliance with current federal standards for detention.

THE NAVAJO NATION

LEONARD HASKIE
INTERIM CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

IRVING BILLY
INTERIM VICE CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

INDIAN LAW ENFORCEMENT REFORM ACT

H.R. 498

TESTIMONY OF THE NAVAJO NATION
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, D.C.
JULY 21, 1989

Honorable Members of the Senate Select Committee on Indian Affairs, I am Herb Yazzie, Attorney General for the Navajo Nation. I am accompanied today by Major George John, who serves as Acting Chief of Police for the Navajo Nation. On behalf of the Navajo Nation, I would like to thank you for the opportunity to talk with you this morning regarding the essential issue of law enforcement in Indian country and specifically the Indian Law Enforcement Reform Act, H.R. 498.

I would like to begin my testimony with a brief history of the law enforcement functions of the Navajo Nation.

The Navajo Department of Law Enforcement is a program within the Navajo Division of Public Safety. The Department has primary responsibility for police, detention, and criminal investigation functions and activities on the Navajo Reservatio and adjoining "Navajo Country," which includes areas of Arizona, New Mexico, and Utah.

Since January 1959, the Navajo Nation has operated the "law and order" or police operations and detention programs, initially as programs funded by the Navajo Tribal government. In October 1976, the Navajo Nation contracted the law enforcement and detention programs from the Bureau of Indian Affairs under Public Law 93-638, the Indian Self-Determination Act. In January of 1989, after 13 years of developing experience and confidence through this contracting process, we felt prepared to assume further law enforcement responsibility. As a result, we contracted with BIA for the criminal investigation function which we are presently fulfilling.

H.R. 498 proposes to exempt the investigative function of the BIA Division of Law Enforcement Services from the contracting requirements of the Indian Self-Determination Act.

The Navajo Nation stands strongly opposed to this provision. The exemption of such a basic function of the Navajo Nation from 638 requirements degrades the sovereignty of our government, ignores economic realities, and disregards the progress and potential of our law enforcement system.

SOVEREIGNTY ISSUES

H.R. 498 represents a frontal attack to the sovereign powers of the Navajo Nation. This attack comes at a critical phase for the Tribe. The Navajo Nation's ability to prudently and effectively exercise our sovereign powers, including the enforcement of the laws, has never been more evident than it has been in the last six months. Through the trials and reforms of our recent troubled period, the Navajo Nation has proven its integrity for self-governance. During this time, the just and competent enforcement of the law by the Navajo Nation's own people has been vital to this restoration of order and sovereignty for the Tribe.

This spirit of effective self-determination has always been vital to progress in Navajoland. Since the passage of P.L. 93-638, the Nation has assumed the responsibilities of

administering the social services, substance abuse, education, and vital statistics, among other programs, under the authority granted tribes in the Indian Self-Determination Act. The amendments to the Act, which were passed last October, gave further evidence of the federal government's belief in the importance of Indian Nations caring for our own people. The removal of the criminal investigative functions from the requirements of P.L. 93-638 will create a greater presence of the Bureau of Indian Affairs in Indian country. This directly contradicts the intent of Congress in passing and amending the Indian Self-Determination Act.

ECONOMIC ISSUES

The exemption from the Indian Self-Determination Act provided by H.R. 498 ignores the economic realities facing the federal government as well as the economic potential of law enforcement programs in Indian country.

The budget for FBI law enforcement activities on Indian reservations has been reduced annually. The BIA budget for law enforcement activities has continually been confronted by budget reductions. The U.S. Attorney's Office budget has also suffered

from the fiscal restraints facing the federal government. Current estimates forecast similar and larger cuts in these federal programs due to the fierce economic pressures confronting the Congress. During an era of such economic limitations it is ill-advised to shift the burden for law enforcement in Indian country back to these federal agencies.

In the midst of these federal budget cuts, the Navajo Nation has proudly and capably shouldered the responsibility for its law enforcement program. Since taking over the criminal investigation component of law enforcement services on January 1, 1989, the Navajo Department of Law Enforcement has dedicated three times the work force as had been provided by the Bureau of Indian Affairs. We have witnessed an improvement in the law enforcement services provided to our people in these past few months, and we look forward to the opportunity to continue to improve these services through further training and experience.

In addition, the efficiency of the law enforcement program has improved under the Navajo Nation. The judicial system is better served when the procedural trail from the commission of the crime to the courthouse is tread by the same law enforcement agent. The previous bifurcated system, whereby the Navajo

Police Department was often the agency of first response and the BIA would later take over the case, proved burdensome and inefficient. In a land where the geographic distances are great and the crime rate is increasing with the population, intelligent use of resources is critical. Waste cannot be afforded.

THE PROGRESS AND POTENTIAL OF NAVAJO LAW ENFORCEMENT

The exemption of 638 requirements provided under the terms of H.R. 498 disregards the progress achieved by Navajo law enforcement officials and the potential the Tribe has shown for the capable management of its law enforcement program.

The progress of the Navajo Law Enforcement Program has been a result of the cultural sensitivity of the Navajo law enforcement officials for their own people. The importance of this sensitivity and understanding of both Navajo language and tradition cannot be overestimated, especially in a discipline as delicate as criminal investigation. Despite the fact that a portion of the Navajo population is bilingual, many Navajos speak only their native tongue and are unable to communicate with English-speaking BIA officers. Young women who have been

molested are less reticent to tell their stories to officers who speak their own language. Old men who have herded sheep or created silverwork all their lives are less intimidated when questioned by those who understand their cultural guidelines.

One example of the importance of this cultural understanding and sensitivity occurred in December of 1987 when two of our Navajo Police Officers were brutally murdered in a remote section of the Navajo Nation. The Federal Bureau of Investigation sent a team of their investigators to the area to work on the case. The area residents who were privy to the events surrounding the incident were resistant to supplying the needed information to the federal outsiders. The diligent efforts of the Navajo Department of Law Enforcement Criminal Investigators who assisted in the case proved to be the link which resulted in the conviction of the murderers. The case was solved and justice was served because the Navajo officers understood the subtleties of communication in such a delicate situation.

In addition, the U.S. Attorneys have shown their increasing confidence in the abilities of the Navajo Department of Law Enforcement criminal investigators. Since 1982, tribal

investigators, by agreement with the U.S. Attorneys, have conducted all investigations of vehicular homicide cases in Navajo country. This partnership has a proven record of success, which is based upon a spirit of increasing trust and cooperation between the Navajo Nation and the U.S. Attorneys in the federal prosecution of those cases.

Through its efforts and in the dedication of its people, the Navajo Law enforcement program has proven its potential for continued and increasing success. As an example, when one thirteen-year veteran criminal investigator with the Navajo Department of Law Enforcement heard we were coming to Washington to talk with you he asked me to tell you that he and others have foregone working for the BIA -- despite better benefits -- because of his dedication to the Tribe and his belief in the importance of developing a first rate Navajo police force.

I would like to conclude my remarks by telling you myself just how serious the Navajo Nation is about law enforcement in Navajo country: As Navajos, we traditionally have placed great emphasis on the welfare and protection of our families and communities. We can never lose sight of the fact that the life and well-being of our families is dependent upon the continued success of our efforts. No responsibility can be more important than this.

I therefore urge you to reject the provisions of H.R. 498 which exempt the investigative function of the BIA Division of Law Enforcement Services from the contracting requirements of the Indian Self-Determination Act.

In addition to my testimony, I request the opportunity to submit some further written material regarding this issue.

Once again, thank you for your time.

Salt River

PIMA-MARICOPA INDIAN COMMUNITY

ROUTE 1, BOX 216 / SCOTTSDALE, ARIZONA 85256-9722 / PHONE (602) 941-7277

TESTIMONY OF EDWARD REINA, JR.
TO THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
July 21, 1989

Chairman Inouye, members of the Committee, I am Edward Reina, Jr., Chief of Police and a member of the Salt River Pima-Maricopa Indian Community. I appreciate the opportunity to provide testimony on the Indian Law Enforcement Reform Act.

I represent my Community and also the 19 Indian Communities of the Inter-Tribal Council of Arizona.

The Salt River Pima-Maricopa Indian Community has contracted for law enforcement services with B.I.A. since 1967 and since the early 1980's has assumed the Criminal Investigations functions normally delegated to the F.B.I. or B.I.A. The result is we have strengthened our department, we have enhanced relationships with our neighbors and Non-indian counterparts which has ultimately benefited all the people we serve.

We support the act in part and feel it is necessary, but there are concerns with the section which states that the Criminal Investigations function "shall not be subject to contracting under the Indian Self Determination Act."

Not only is this in direct conflict with the Indian Self Determination Act but it also closes the door on any Tribe that may want to develop their Criminal Investigations functions.

Indian Country is plagued by alcoholism, high unemployment the endless varieties of social and economic problems. There needs to be control returned to our Communities to instill hope that these problems can be overcome. Not a taking away of control.

It is apparent that the section on non-contractability is directed toward removing another area of control from tribal governments. Whether the loss is real or not there remains the perception that there will be no control over serious crimes in the community. In a very real sense this adds another stone to the mountain of dominance

exerted by the Bureau of Indian Affairs and results in a weakening of the Tribal Communities esteem.

Options should be left to the Tribes, although I speak for several Tribes, each of the Tribes are unique, as unique as their language. I urge the committee to recognize this and to leave the door open for a Tribe that may want to develop a Criminal Investigation function while also providing the alternative for a Tribe to use the services of the B.I.A. I also suggest that the B.I.A. provide technical assistance to a Tribe that may be developing a Criminal Investigations function.

We are also concerned about Section 10 which would direct the U.S. Attorney to submit case files and reports to the Tribe on declinations of prosecution. We recommend that this be ammended to exclude "appropriate governmental" thus providing the report to law enforcement officials only. This is consistent with privacy laws concerning Criminal Investigations.

It is also recommended that a time frame of six weeks be included from the date of declination to forward the report to law enforcement officials.

There have been numerous studies and reports generated on Law Enforcement in Indian Country such as the American Indian Court Judges Association report in 1974, the Department of Justice Task Force on Indian Matters Report in 1975, the American Indian Policy Review Commission Report in 1976 and the Report of the United States Commission on Civil Rights in 1981. Throughout these years little has been done to address the problems that each of these reports have consistently identified and corroborated.

I commend Chairman Inouye, Senator McCain and the Committee for your efforts and I am encouraged by the action you have taken and the interest you have in resolving the problems of Law Enforcement in Indian Country.

Colville Confederated Tribes

P.O. Box 150 · Nespelem, Washington 99155 (509) 634-4711

**TESTIMONY OF GENE JOSEPH, COUNCILMAN
FOR THE CONFEDERATED TRIBES OF THE COLVILLE
RESERVATION ON H.R. 498, "INDIAN LAW
ENFORCEMENT REFORM ACT"
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
July 21, 1989**

I appreciate the opportunity to testify before the Senate Select Committee on Indian Affairs regarding H.R. 498, "Indian Law Enforcement Reform Act." I am Gene Joseph, Councilman with the Confederated Tribes of the Colville Reservation and Chairman of the Council's Legislative Committee. Don Bleakney, Law and Justice Administrator for the Colville Tribes, joins me in our presentation today.

The Confederated Tribes of the Colville Reservation is well aware by experience of conflicting law enforcement jurisdictional authorities involved on Indian Reservations and the need to clarify and strengthen the authority for certain Department of the Interior Law Enforcement Services. The Colville Reservation was under Washington State law enforcement jurisdiction as a Public Law 280 State until we secured retrocession in 1986. Since 1986, we have established a most credible tribal law enforcement presence and service on the reservation developing cooperative working relationships with County, State, and Federal law enforcement agencies.

The primary message we convey today is our belief that the Bureau of Indian Affairs Division of Law Enforcement exists to strengthen tribal government law enforcement capabilities. Tribal governments are developing most effective justice systems on the reservation despite difficult obstacles including limited financial resources, inter-jurisdictional jealousies, and racism. Tribal governments are held accountable for the quality of their law enforcement services by the reservation residents and other law enforcement agencies. The BIA, therefore, should ensure that law enforcement at the tribal government service delivery level is its highest priority.

The Colville Confederated Tribes fully supports the original purpose of this legislation to clarify and strengthen the authority for certain Department of the Interior Law Enforcement Services. In our own painful experience, a BIA-Commissioned law enforcement officer was killed in the line of duty on the reserva-

tion in 1986. Although this was clearly a Federal offense by our reasoning, the assailant was tried in State court partially because of the questionable Federal authority of the officer.

The Colville Confederated Tribes, however, is adamantly opposed to Section 3(d) of this bill establishing an unaccountable, elite Branch of Criminal Investigation within the BIA not subject to contracting under the Indian Self-Determination Act. The fundamental policy of the Indian Self-Determination Act is that all programs and activities should be available for tribal contracting. Criminal investigation should not be made an exception. This concept was never presented to tribes in the Pacific Northwest in last year's series of hearings in Rapid City, South Dakota; Phoenix, Arizona; or Albuquerque, New Mexico. Nor was this controversial proposal presented in the original administration bill to the House of Representatives. Only at the Committee on Interior and Insular Affairs hearing and subsequent mark-up were we alerted to this special BIA Investigations Branch unaccountable to and uncontractable by Tribal governments.

The Committee on Interior and Insular Affairs accepted this amendment with expressed reluctance regarding the reasoning for streamlined line of authority and non-contractability of the Criminal Investigations functions. The appeal by the BIA focuses on whether or not the U.S. Attorney's Offices will accept the BIA work as "professional" if the affected tribes are substantively involved. From the House Report 101-60, (page 6) we offer the following excerpts:

Streamlining Supervision of Investigative Personnel

- The rationale for this reform is that such professionalization will enhance the investigative work product of the BIA's investigative personnel such that it would become more acceptable to U.S. Attorney's (SIC) or prosecutorial purposes. The hearing record has shown that the FBI lacks adequate resources to investigate many of the lesser felonies within Indian Country falling within their jurisdiction and that the Federal prosecutors will not, or are reluctant to, accept the work product of BIA personnel.

Unavailability of Investigation Functions for Self-Determination Contracting

- The Committee is reluctant to make this exception to the right of Indian tribes to contract for BIA programs on their reservations. However, investigative personnel operating under tribal supervision under a '638' contract might well lose their status as Federal law enforcement officials and, consequently, their investigative work product might well be rejected by U.S. Attorneys.

The streamlining of accountability so that the work product "would become more acceptable" and the non-contractability of criminal investigations due to a "might well" problem with the U.S. Attorneys' are certainly not unshakeable truths on which to premise these amendments.

In law enforcement, the local circumstance and professional relationships established over time eliminates these vague judgement calls by the U.S. Attorneys' and the FBI. Tribes are very capable, and willing, to perform the full range of police services on Indian Reservations, including the professional investigation of serious Federal crimes. The establishment of this elite corps of investigators creates the impression that tribal governments are incompetent or somehow unprofessional in this field.

The Bureau of Indian Affairs has established special law enforcement units in the past with questionable results at extensive expense. After the Wounded Knee situation in 1973, the BIA established a Special Operations Service (SOS) serving the Central Office as a glorified SWAT Team. A Marijuana Eradication Response Team (MERT) confiscated tons of marijuana at prohibitive cost. And, a Special Investigations Unit (SIU) serves tribes in the Southwest. The cost and long-term effectiveness of these special units is questionable as the local law enforcement capabilities, relationships, shared responsibilties, understanding of the people, and local camaraderie form the foundation of effective law enforcement.

We do not intend to demean or discredit the limited number of BIA Criminal Investigators who are dedicated professionals who work closely with tribes. We are concerned, however, with a non-accountable special investigations unit immune from scrutiny. These units, over time, can quickly evolve into a convenient home for less than enthusiastic bureaucrats. This is an inefficiency cost to the Federal government and a detriment to tribal law

enforcement capabilities. Tribal governments should control special investigations operations on their reservation, either as managed by the BIA Area/Agency Offices, or through direct contracting. Investigations of tribal governments, of course, would be managed by the FBI.

The issue of the U.S. Attorneys' offices or the FBI questioning the professionalism of a Criminal Investigation if the tribe or local BIA agency is involved is indeed troublesome. Certainly tribal government law enforcement capacities covers a range in levels of sophistication. A major part of the problem, as stated previously, is resources. Another problem is a mixture of miscommunication, misunderstanding, and racism. Tribal governments are sovereigns whose police professionalism, over time, will prevail over these obstacles to become an accepted and respected element in the law enforcement system. Many tribes across the nation have achieved these levels of sophistication and established professional relationships such as the Colville Confederated Tribes.

I have two other subjects, peripheral to this legislation, which I would like to address today for potential consideration. First is the tribal concern over maintaining a professional police force on limited revenues and no retirement options. Often, police trained at considerable expense by the BIA and employed by tribal governments are hired away by other law enforcement agencies as tribes cannot afford this extravagance. We would appreciate the Committee exploring the possibility of tribal access to the Federal retirement system to assist in recruiting and maintaining a dedicated law enforcement staff.

A second concern is the "criminal window" created when the U.S. Attorney or FBI make a determination to decline or terminate investigation or prosecution. As stated in House Report 101-60 (page 7):

> In many cases, lesser Federal felony charges are not pursued, either for lack of resources or because of a determination that the offenses are not significant enough to warrant Federal prosecution, with the assumption being that the accused could be charged and tried by the tribe under its own criminal code for a lesser offense.

Often, these judgements by the U.S. Attorney reverts the case back to the tribe with limited resources to take the case to trial and then absorb the incarceration expense. And justice on the

reservation, in many cases, reverts to a decision on financial capability rather than appropriate punishment. This is a dangerous criminal window in tribal government attempts to maintain law and order, especially in the last two quarters of each fiscal year.

In closing, I submit also for the record the Colville Business Council Resolution 1989-515 in opposition to the entire section 3(d) of H.R. 498.

I thank you on behalf of the Confederated Tribes of the Colville Reservation for this opportunity to present our views. I would be pleased to respond to any questions you may have on our statement.

1989-515

R E S O L U T I O N

WHEREAS, it is the recommendation of the Law and Justice Committee of the Colville Business Council to oppose that entire section 3(d) of H.R. 498, the "Indian Law Enforcement Reform Act," which creates a Branch of Criminal Investigation within the Bureau of Indian Affairs;

WHEREAS, public hearings on H.R. 498 were held in Rapid City, South Dakota; Albuquerque, New Mexico; and Phoenix, Arizona, notices of which were not received by the Colville Confederated Tribes, thereby, effectively denying the Colvilles and other tribes of the Pacific Northwest of the opportunity to comment; and

WHEREAS, the Branch of Criminal Investigation contemplated in said legislation would operate without oversight by tribal, agency, or area authorities; and

WHEREAS, the contemplated Branch of Criminal Investigation would remain aloof and detached from the primary functions of reservation policing, which is contrary to sound, community based, policing principles; and

WHEREAS, the Colville Confederated Tribes along with other tribes throughout Indian country are capable, and willing, and indeed performing a full range of police services on Indian Reservations including the professional investigation of serious Federal crimes; and

WHEREAS, the funding necessary to create and sustain a criminal Investigation Branch could be put to better use in local programs designed to reduce crime through community based policing; and

WHEREAS, the proposed legislation would prevent tribes from contracting the investigative function under the provisions of P.L. 93-638, thereby inhibiting self determination and undermining tribal governments.

THEREFORE, BE IT RESOLVED, that we, the Colville Business Council, meeting in SPECIAL Session, this 6th day of July, 1989, at the Colville Indian Agency, Nespelem, Washington, acting for and in behalf of the Colville Confederated Tribes, do hereby approve the recommendation of the Law and Justice Committee of the Business Council.

The foregoing was duly enacted by the Colville Business Council by a vote of 13 FOR 0 AGAINST, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:

Jude C. Stensgar, Chairman
Colville Business Council

HERMAN AGOYO, *Chairman*
SEFERINO TENORIO, *Vice Chairman*
JOHN GONZALES, *Secretary-Treasurer*

ALL INDIAN PUEBLO COUNCIL

OFFICE OF THE CHAIRMAN

1015 Indian School Road, N.W. • P.O. Box 6507 • Albuquerque, New Mexico 87197-6507 • (505) 247-0371 / Ext. 224, 225

STATEMENT OF MR. HERMAN AGOYO, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL, BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON H.R. 498, INDIAN LAW ENFORCEMENT REFORM ACT, IN WASHINGTON, D.C., JULY 21, 1989.

Good morning, Mr. Chairman and other honored Committee members.

My name is Herman Agoyo. I serve as Chairman of the All Indian Pueblo Council, which is a representative body for and whose membership is comprised of nineteen Pueblos in New Mexico.

I respectfully thank you for the opportunity to appear before this distinguished Committee today. Informatively, advance notification of this hearing and the time to prepare and notify the Pueblo governments was minimal. At a prior subject matter hearing on September 1, 1988, at Santa Fe, New Mexico, before the House of Representatives Committee on Interior and Insular Affairs, I had requested that follow-up consultation be made with the Pueblo governments before any further Congressional legislative introductions were made. Clearly, this was not accomplished. Accordingly, my testimony today will be summarized as it relates to H.R. 498 and other relevant issues and needs facing law enforcement on Pueblo reservations today. Moreover, the individual Pueblos may also desire to submit testimony for consideration by this Committee concerning H.R. 498 and related matters.

Today, more than ever, effective and efficient law enforcement is crucial and vital for the continued well-being and common welfare of all persons, to include business entities, situated within the Pueblo communities and lands. Accordingly, any law enforcement legislation which is introduced and that could become law, I would submit, must undergo close scrutiny and examination as to its immediate and long range effects on Pueblo governments and their current tribal law enforcement systems. This same examination must also be accomplished for any major change(s) to the Bureau of Indian Affairs' current line authority for criminal investigations and funding allocations, to include needed monies for tribal law enforcement.

H.R. 498, as proposed, would radically alter the current line authority for criminal investigative personnel by subjecting them only to the supervision and direction of law enforcement personnel of the Branch of Criminal Investigations or the Division of Law Enforcement Services. Such personnel would not be subject to the supervision of the local Bureau Agency Superintendent or the applicable Area Office Director, as is currently in place. Therefore, I would oppose this change and would submit that such a proposed change is not in the best interests of the Pueblo governments. The Pueblos over the years have fostered close working relationships with applicable Agency Superintendents and Area Office Directors. To disrupt this current line authority for criminal investigators would jeopardize the trust and confidence placed in the current Bureau law enforcement system. It is further submitted that the Agency Superintendent, at the local level, is in a better position effectively and comprehensively to deal with law enforcement matters as they arise.

Moreover, this legislation does not address a real concern of the Pueblos concerning the Bureau's current law enforcement organization. This concern is what I would term inadequate management and tolerating mediocrity within the organization. I would submit that the proposed legislation, as it would alter the current line authority, is thus an attempt to address and treat a symptom rather than the root problem of inadequate management.

A second major concern raised by H.R. 498 is that the tribal contracting of the criminal investigative function would be precluded. Such a preclusion undermines and directly goes against the original intent and purpose of P.L. 93-638 and P.L. 100-472, and the Administration's current American Indian Policy of fostering self-determination and self-government. It would therefore seem consistent with current contracting objectives and policies to permit tribes to contract for and better train and equip their tribal criminal investigators utilizing allocated law enforcement dollars rather than reverse such a direction. Moreover, relating to this preclusion, an underlying premise for Indian law enforcement systems derives from the basic tenant of tribal sovereignty, that Indian tribes retain all powers of a sovereign nation that have not been abrogated or limited by judicial interpretation or abrogated by federal legislation. H.R. 498 in effect would further limit tribal sovereignty and tribal self-government by precluding contracting for the criminal investigative functions under P.L. 93-638.

A third concern with this proposed legislation arises with the understanding that additional amounts for law enforcement will not be appropriated. Historically, the Pueblos have consistently ranked law enforcement and tribal courts within the top three

under the "Indian Priority System." Thus, the importance placed by the Pueblos on law enforcement and related law and order systems is evident. Steady increases in crimes on Pueblo reservations would strongly and unequivocally suggest that increased funding for tribal law enforcement and tribal court functions is realistic and a must for the continued well-being of the Pueblo communities. Moreover, added monies are needed in order to defray the rising costs and availability of detention facilities. An integral part of effective law and order is the availability of adequate confinement facilities, to include rehabilitative services. Currently, member Pueblos lack an adequate confinement facility or facilities to house Indian offenders. In addition, jail costs in county and state institutions are becoming prohibitive to the point of some tribal sentences being affected and limited due to the shortage of funds to pay jail costs. Lastly, it remains unclear whether the monies needed to establish the proposed Branch of Criminal Investigations, to enter into Secretarial agreements with other agencies and related programmatic functions will come from appropriations earmarked for tribal law and enforcement contracts. Further funding reductions on tribal law and enforcement contracts will result in and have a devastating and irreparable effect on Pueblo law enforcement.

In conclusion, for the reasons enumerated above and those operational program areas which remain ambiguous and vague as to needed funds and operational implementation, we oppose the passage of H.R 498 in its entirety.

This concludes my prepared statement, Mr. Chairman. Should you have any questions, I would be pleased to address them.

Office of the Governor

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(505) 869-3111
(505) 869-6333

PUEBLO of ISLETA

P.O. Box 317
Isleta, New Mexico 87022

STATEMENT OF ALVINO LUCERO, PRESIDENT OF THE TRIBAL COUNCIL OF THE PUEBLO OF ISLETA, REGARDING H.R. 498, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

Honorable Chairman and Members of the Committee:

My name is Alvino Lucero, and I am the President of the Isleta Tribal Council. With me is Juan B. Abeita, Vice President of the Isleta Tribal Council. We represent the Pueblo of Isleta, a reservation of over 3,000 people and almost a quarter of a million acres in central New Mexico. Isleta has had an effective tribal government for many years and has dealt with all of the issues which confront local governments, Indian and non-Indian alike. Isleta has had much experience in law enforcement services through its own tribal police force, and has dealt in law enforcement with BIA police, Federal enforcement agents, State, County, and other agencies. Isleta has had a lengthy and extensive experience in law enforcement matters.

In reference to the specific legislation, H.R. 498, the "Indian Law Enforcement Reform Act," Isleta would like to state its opposition to the bill for some very specific reasons. It should first be noted that the bill apparently passed the House of Representatives without a general notice of its considerat on being made known to the Indian community. Isleta, which prides itself on being aware of on-going legislation, was uninformed that the bill was pending, much less had passed the House of Representatives. Our tribal offices had not been notified, nor had any of the BIA offices in our region. I would like to state our concern that a bill of such considerable impact could be contemplated by the House of Representatives without sufficient input from the Indian community.

These are the specific objections Isleta has to the bill:

1. The creation of a Division of Law Enforcement Services which would be independent of BIA Agency Superintendents or Area Office Directors, both of whom are in direct and frequent contact with tribal officials, seems a calculated affront to Indian tribal government. Tribal officials have a more direct and overriding interest in law enforcement on the Reservation than an official in Washington, much removed from the Reservation in time, distance, and, oftentimes, perspective.

2. To center the control and flow of information in Washington, D.C., is apparently based on the dubious premise that Washington-based officials are more able, and honest than officials located elsewhere.

3. That the Secretary of Interior would enter into agreements with State or other non-Indian local governments so that law enforcement powers can be employed by those governments in Indian country, is completely unacceptable. It flies in the face of the historic attitude of tribes (particularly those in non-P.L. 280 states) as to the jurisdictional integrity of tribes. Moreover, from the standpoint of a tribe, it is completely unnecessary. A tribe can issue a police commission, either limited or general, which would grant enforcement powers to any person it desires, including State police, County sheriffs, or other local law enforcement personnel. The Secretary should not be permitted to take over this function and discretion presently enjoyed by tribal governments.

4. The maintenance of law and order on reservations is an integral part of the trust responsibility of the Secretary of Interior. This legislation would provide a way for the Secretary to contract away to non-Indian, non-Federal governments this obligation, the law enforcement powers. The Secretary should not be permitted to turn his back on his obligation to Indian people.

5. The legislation would permit the Secretary to utilize BIA funds for the activities in this Act, specifically, for the creation of a special police force and contracting with non-Indian, non-Federal enforcement agencies. This would take funds from other BIA programs which vitally need continued support. The present BIA budget, which has been woefully inadequate for the last several years, would be strained even further and would deny Indian people the services to which they are legally and morally entitled.

The Pueblo of Isleta respectfully requests that this Committee reject H.R. 498 and, further, that the Committee invite and permit other comments from the Indian community throughout the country.

Thank you for the opportunity to share these views with the Committee.

Office of the Governor

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(505) 869-3111
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PUEBLO of ISLETA

P.O. Box 317
Isleta, New Mexico 87022

TO: Chairman and Members
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

RE: H.R. 498

STATEMENT

In opposition to H.R. 498, "the Indian Law Enforcement Reform Act," the Pueblo of Isleta states as follows:

1. The creation of a Division of Law Enforcement Services which would be independent of BIA Agency Superintendents or Area Office Directors, both of whom are in direct and frequent contact with tribal officials, seems a calculated affront to Indian tribal government. Tribal officials have a more direct and overriding interest in law enforcement on the Reservation than an official in Washington, much removed from the Reservation in time, distance, and, oftentimes, perspective.

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PUEBLO of ISLETA

P.O. Box 317
Isleta, New Mexico 87022

RESOLUTION NO. 89- 27

At a duly called meeting of the Tribal Council of the Pueblo of Isleta, the following resolution was passed:

WHEREAS the Tribal Council of the Pueblo of Isleta has been informed that Bill H.R. 498 has been referred to and is being considered by the Select Committee on Indian Affairs of the United States Senate, and

WHEREAS the Tribal Council has examined H.R. 498, has considered the same at length, and desires to express its opposition to the same,

NOW, THEREFORE, BE IT RESOLVED that the Tribal Council of the Pueblo of Isleta takes a position in total opposition to Bill H.R. 498, "the Indian Law Enforcement Reform Act," as an affront to tribal jurisdiction and as being counterproductive as far as the maintenance of law and order on reservations is concerned.

BE IT FURTHER RESOLVED that the position of the Pueblo of Isleta be expressed to all relevant persons, including the Congressional delegation of New Mexico, as well as persons involved in the consideration of the Bill.

CERTIFICATION

I, the undersigned, as Governor of the Pueblo of Isleta, do hereby certify that the foregoing resolution was passed at a duly called meeting of the Tribal Council of the Pueblo of Isleta, held on the 19 day of July, 1989, at which a quorum was present, with 10 voting for and 0 opposing aid resolution.

Governor

Attest:

Secretary

LUMMI INDIAN BUSINESS COUNCIL
2616 KWINA RD. • BELLINGHAM, WASHINGTON 98226-9298 • (206) 734-8180
DEPARTMENT: _____ EXT. _____

Testimony of R. Bruce Haley
Law and Order Administrator
of the
Lummi Indian Tribe and General Chairman
of the
International Association of
Chiefs of Police Indian Law Enforcement Section
Before the Senate Select Committee on Indian
Affairs Hearing on H.R. 498
July 21, 1989

Mr. Chairman and Honorable Senators. I wish to thank you for inviting me to testify today on H.R. 498, the "Indian Law Enforcement Reform Act."

While I generally endorse this Act, there are areas that need to be amended as they are unacceptable to the tribes that the B.I.A. law enforcement is intended to serve. My basic premise is that this bill should improve law enforcement on Indian Reservations to benefit Indian Tribes.

Indian law enforcement has been, at times, a confusing and shifting area of laws that effect tribes, states, and the federal government. While this bill clarifies authority and creates consistencies with other law enforcement entities; what we must not do is to lose sight of the basic fact that the B.I.A. and other federal agencies mission is to protect the tribes and the persons that reside on their reservation.

There are five areas of this proposed legislation that I wish to address:

1. Section 3 (a) (1) establishes a criminal investigation branch that will reach a inter-agency agreement which will include guidelines of the relevant U.S. Attorney's.

Under Section 3 (d)(1) this inter-agency agreement that includes the individual U.S. Attorney's does not include any tribal input or agreements. I have testified twice to the Senate Select Committee on Indian Affairs Committee on Special Investigations about the U.S. Attorney of Western Washington District's non-prosecution of Indian cases. I feel that any agreements that are at the local level must include the Indian Tribes in those agreements. Our local B.I.A. Agency Office and the U.S.

LARRY G. KINLEY, Chairman
GERALD I. JAMES, Vice Chairman | SAMUEL M. CAGEY, Secretary | RONALD F. PINKBONNER, Treasurer | CLARENCE BOB, Councilman | DAVID H. JEFFERSON, Councilman

Attorney's office have agreements that Tribes cannot present to the U.S. Attorney's office nor will they investigate or prosecute property crimes where the loss value is less than $3,000, I know of no tribe that has a tribal criminal investigator to work on cases, at this time, so cases under $3,000 must go uninvestigated. If the case is somehow solved, then the suspect must go to tribal court. The courts, in turn, have no money to support incarceration expenses. And so, agreements reached without tribal involvement often benefit those providing the service rather than those receiving it. This is certainly unacceptable in the real world.

2. Section 3(d)(2) allows that the Branch of Criminal Investigations shall not be subject to the Indian Self-Determination Act.

The Lummi Tribe, and the other tribes I have spoken with about this bill, are strongly opposed to this section. The Amended Indian Self-Determination Act (P.L. 100-472) passed by Congress last year states that all B.I.A. positions are subject to contracting by the Tribes. Positions within the B.I.A. must be subject to contracting as this is one of the ways the tribes can keep the B.I.A. accountable. B.I.A. self-determination contracts now require that police personnel, including investigators, that tribes hire must meet federal hiring and training requirements. Over fifty percent of the Major Crimes Act violations for the BIA Puget Sound Agency occur at Lummi, yet none of the three criminal Investigators at this agency are available to work at Lummi. Some Tribes feel that the B.I.A. investigators do not always work in the best interests of the tribes regarding priorities and assignments.

3. Section 3 (d) (3) (A) makes the Branch of Criminal Investigation subject only to the supervision and direction of law enforcement personnel.

I agree that line authority needs to be given for criminal investigators within the Bureau of Indian Affairs. The Chief of the Bureau of Indian Affairs needs to have direct control of his staff. This will also allow the F.B.I. and other federal agencies to share their investigative reports with B.I.A. Investigators.

4. Section 10 makes reporting to the Tribes mandatory for federal agencies that decline investigator or prosecution and reporting and sharing case file and all evidence and statements with the Tribes for cases that could be a violation of Tribal Law.

Reporting to the Tribes has to be included in this bill. As you are aware, I have testified twice this year as to the problems with the U.S. Attorney Office and the lack of prosecution for Indian Crimes, especially child sexual abuse. Without reporting to the Tribes declination issues and sharing all files with the Tribes, there will be a vacuum and tribes and the people that live there will believe there is no justice on Indian Reservations. If prosecution is to occur and justice is to be served, tribes would be forced to spend precious funds duplicating previous work without this provision.

5. I believe that language should be added to this bill prohibiting the Bureau of Indian Affairs from administratively removing law enforcement funds from their appropriated category.

As examples, in the B.I.A. Puget Sound Agency, salary savings from a B.I.A. enforcement position was taken from law enforcement by the Area Office and put into another program. This money could have and should have been added to tribal law enforcement contracts.

The Lummi tribe had $100,000 added to its base amount for law enforcement by Congress in FY 88 and FY 89. The Bureau of Indian Affairs FY 89 and FY 90 Budget Justifications to Congress removed this appropriation with no justification provided either the Tribe or Congress. Effectiveness and consistency of law enforcement services depends on a stable base of financial support.

In summary, tribal governments are sovereign nations. In the past, the BIA enforced most tribal laws. Since the enactment of P.L. 93-638, tribes have assumed increasing management and control of their justice systems. Tribes should be given every possible support resource, including access to criminal investigator contracting under P.L. 100-472, to maintain tribal law and order on the reservation. The BIA and FBI should serve as a special resource to be available in the case of an unmanageable situation. The Tribe, however, must be the decision-making authority for law enforcement on the reservation.

I appreciate the opportunity to testify. I am available for any questions.

TESTIMONY OF

PAUL IRON CLOUD

PRESIDENT OF THE OGLALA SIOUX TRIBE

BEFORE THE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

JULY 21, 1989

HEARING ON H.R. 498

THE INDIAN LAW ENFORCEMENT REFORM ACT OF 1989

Chairman Inouye, Vice Chairman McCain and members of the Committee, my name is Paul Iron Cloud, and I am the President of the Oglala Sioux Tribe of the Pine Ridge Reservation in South Dakota. On behalf of the Oglala Sioux Tribe and the Oglala Sioux Tribal Public Safety Commission, I thank the Committee for inviting the Tribe to present testimony on H.R. 498, the Indian Law Enforcement Reform Act of 1989. I am accompanied by the Vice President of the Tribe, Mr. Harold Dean Salway, and Mr. Louis Whirlwindhorse, the Assistant Executive Director of the Commission.

The power to enforce its laws is an essential attribute of any sovereign government. Tribal sovereignty does not mean very much if an Indian tribe or nation must rely on an agency of the federal government such as the Bureau of Indian Affairs to maintain law and order within the Indian community. Because the Oglala Sioux Tribe believes that law enforcement is an essential attribute of sovereignty, the Tribe, in 1976, established the Oglala Sioux Tribal Public Safety Commission and charged the Commission with responsibility for performing the entire scope of law enforcement functions within the Pine Ridge Reservation. Since 1977 the Commission has carried out its responsibilities through contracts with the BIA under the Indian Self-Determination Act. Because the Commission performs the full scope of law

enforcement functions, the BIA has no law enforcement role within the Pine Ridge Reservation, except to monitor the Commission's contract and to provide technical assistance.

COMMENTS ON H.R. 498

It is our understanding that the basic reason that H.R. 498 is now before the Senate is that there is a need to clarify the law enforcement authority of the BIA. We have no objection to such clarification with respect to reservations on which the BIA performs law enforcement functions. However, we are very concerned that the bill as passed by the House might be interpreted to authorize the BIA to assert that it alone is responsible for certain law enforcement functions (such as the investigation of federal crimes) and to do so by withholding funds that would otherwise be available for tribal law enforcement activities. Because of our concerns, we have prepared an alternative bill which incorporates those provisions of H.R. 498 that we support but that also includes alternative language for those provisions of H.R. 498 that we oppose.

Specifically, we are very concerned about section 3(d) of the bill, which would direct the Secretary of the Interior to establish, within the BIA Division of Law Enforcement Services, a separate Branch of Criminal Investigation. The bill would

provide that personnel of this Branch would be subject to supervision and direction only from the Division of Law Enforcement Services and not from BIA personnel at the Area and Agency levels. The bill would further provide that the functions of the Branch of Criminal Investigation would not be subject to contracting under the Indian Self-Determination Act.

It is our understanding that the basic rationale for these provisions is the need to develop the professionalism of criminal investigators in Indian country. We understand that the House Committee on Interior and Insular Affairs received testimony from United States Attorneys, and that at least one such U.S. Attorney testified in support of "line authority" within the BIA for law enforcement and in support of exempting the criminal investigation function from contracting under the Indian Self-Determination Act.

While we are not opposed to "line authority" within the BIA over its own law enforcement personnel, we do not believe that such "line authority" should be established by statute. In our experience, the statutory establishment of "line authority" over education personnel has created as many problems as it solved, and we suggest that the Congress look carefully at this issue.

More importantly, we strongly oppose the provision of H.R. 498 that would exempt the criminal investigation function from contracting under the Indian Self-Determination Act. The Oglala Sioux Tribal Public Safety Commission has contracted for this function since 1977 pursuant to authority granted to it by the Oglala Sioux Tribal Council. However, in the negotiations for the Commission's fiscal year 1985 contract, the BIA sought to withhold funds in order to conduct this activity itself. The BIA continued to argue with the Commission on this issue in subsequent fiscal years until the issue was finally resolved in the fiscal year 1989 contract with the Commission receiving the funding for such investigative work in its contract. We are concerned that, if the bill is enacted into law in its present form, the BIA will once again seek to withhold funds from the Commission's contract with the intent of performing criminal investigation activities on the Pine Ridge Reservation with BIA personnel contrary to the wishes of the Tribe.

We believe that the proposed exemption of criminal investigation from self-determination contracting is wrong for two basic reasons. First, Indian tribes, in general, and the Oglala Sioux Tribe in particular, have demonstrated that they have the competence to conduct criminal investigations for major federal crimes as well as for crimes under tribal law. For the information of the Committee, we have attached to our testimony some materials that were compiled by the Executive Director of

the Commission, Mr. Paul Rooks, who also serves as our Chief of Police. These materials include documentation on some of the cases in which investigations conducted by the Commission have been used as the basis for prosecution by the United States Attorney. In addition, documentation is included on some of the cases in which the U.S. Attorney has declined to prosecute, and the Tribe has followed up by prosecuting in Tribal Court. Our reason for subnitting these materials is that they demonstrate an excellent ongoing working relationship between the Commission and the U.S. Attorney.

Our second reason for believing that the proposed exemption from self-determination contracting is wrong is a policy reason. The Congress has repeatedly expressed its intent that the Indian tribes should have greater control over federal programs and services for the benefit of Indians. As a matter of federal policy, we do not believe that the Congress should exempt an otherwise contractible program from the Indian Self-Determination Act, with the possible exception of circumstances in which there is a compelling reason for such an exemption. No such compelling reason has been advanced here. The rationale is apparently the need to professionalize the criminal investigation function within the BIA. However, on Reservations such as Pine Ridge, in which there is no BIA criminal investigation function, the need to professionalize can be met by providing improved training opportunities for the Tribe. The Tribe and

the Commission would welcome an increase in the resources available for carrying out the criminal investigation function, and we would also welcome an increase in the availability of technical assistance and training to enhance our capabilities in this area. We would also urge that the Bureau abandon its practice of offering jobs to tribal officers after they have received training and experience from tribal programs, a practice which has undermined our law enforcement program in the past.

THE OGLALA SIOUX ALTERNATIVE BILL

On behalf of the Oglala Sioux Tribe and the Public Safety Commission, I am submitting an alternative bill. A section-by-section analysis of our alternative proposal is attached to this Statement. The bill clarifies the statutory authority of the BIA for law enforcement in terms very similar to those contained in H.R. 498. In addition, our bill specifies that the full scope of the BIA law enforcement function is subject to contracting under the Indian Self-Determination Act.

In addition, section 12 of our bill specifies that the BIA will not have law enforcement authority within an Indian reservation except with the consent of the tribal governing body having jurisdiction over that reservation. The Oglala Sioux Tribe has a Constitution that was adopted and approved by the Secretary of the Interior pursuant to the Indian Reorganization

Act of 1934. Section 1(k) of article IV of our Constitution authorizes the Tribal Council to promulgate and enforce ordinances "providing for the maintenance of law and order" within our reservation. Our interpretation of this constitutional clause is that it vests the Tribal Council with the authority to engage in police activities to enforce federal law as well as tribal law. Since our Constitution was ratified through an election and approved by the Secretary as provided in 25 U.S.C. § 476, it is binding on the Department of the Interior. The Secretary of the Interior in approving the Constitution directed that "all officers and employees of the Interior Department are ordered to abide by the provisions of said constitution and by-laws."

The BIA's claim of a right to engage in law enforcement activities within our Reservation without first obtaining the consent of our Tribal Council is a vestige of the military occupation of the past and an intrusion on our federally-recognized tribal sovereignty. Section 12 of our bill would ensure that the Bureau works cooperatively with the tribal governments representing Indian reservation communities when it administers law enforcement programs on reservations.

Our bill also directs the Secretary of the Interior to establish demonstration projects in highway safety in Indian communities. As members of the Committee may be aware, the

presence of major highways within reservation boundaries often gives rise to a variety of law enforcement problems. The matter of whether a tribal police officer has jurisdiction to arrest any driver that he believes has violated a law can sometimes be resolved through cross-deputization. Another problem involves the differences between the penalties imposed under federal law and state law for similar offenses.

One specific example is vehicular manslaughter, which under South Dakota state law carries a maximum penalty of ten years imprisonment but under federal law is treated as involuntary manslaughter, with a maximum penalty of three years. While tribes can enact laws covering such crimes, tribes are limited by the Indian Civil Rights Act from imposing criminal penalties in excess of one year imprisonment. Our bill would direct the Secretary to establish demonstration projects to address problems in highway safety and would direct each tribe involved in such a demonstration project to report to Congress its recommendations for resolving the problems that it encounters.

CONCLUSION

In conclusion, I want to repeat my earlier statement that law enforcement is an essential attribute of tribal sovereignty. For any tribe that feels strongly about carrying out law enforcement functions itself, as does the Oglala Sioux

Tribe, we believe that the Congress should be supportive of such tribal policy judgments. For any tribe that is willing to let the BIA perform part or all of the law enforcement functions within its reservation, we recognize the need for statutory clarification of the law enforcement authority of the BIA. We believe that our alternative draft bill would achieve both objectives, and we hope that the Committee will give our bill serious consideration.

We thank you again for inviting us to present our views.

INDIAN LAW ENFORCEMENT REFORM BILL

Sec. 1. Short Title.

This Act may be cited as the "Indian Law Enforcement Reform Act of 1989".

Sec. 2 Congressional Findings and Declaration of Policy.

(a) The Congress, after careful review of the existing status of law enforcement in the Indian country, and in the light of the Federal Government's historical and legal relationship and resulting responsibilities to American Indian people, finds that:

(1) the authority to provide for the maintenance of law and order and the administration of justice is fundamental to true self-determination in any society and, in particular, the exercise of such authority by Indian tribes is consistent with the treaties between the United States and the Indian tribes and the federal policy of Indian self-determination declared and implemented in the Indian Self-Determination and Education Assistance Act; and

(2) the Federal performance of its responsibility for law enforcement in the Indian country has generally failed to achieve either an adequate or effective level of law enforcement service or a law enforcement system fully responsive to the needs and goals of the Indian people; and

(3) the present system under which the Bureau of Indian Affairs administers law enforcement in the Indian country is inconsistent with the governmental status and authority of Indian tribes, the goals and purposes of the Indian Self-Determination and Education Assistance act, and the welfare of American Indian people.

(b) The Congress hereby recognizes the obligation of the United States to provide for and assist Indian tribes in achieving an effective system of law enforcement in the Indian country consistent with the governmental status and authority of Indian tribes under federal law, the treaty relationship between the United States and the Indian tribes and the goals, purposes and provisions of the Indian Self-Determination and Education Assistance Act.

Sec. 3. Definitions

In this Act, unless the context otherwise requires --

(1) "employee of the Bureau of Indian Affairs" includes an officer of that bureau;

(2) "enforcement" of a law includes the prevention, detection, and investigation of an offense and the detention and confinement of an offender;

(3) "Indian country" has the meaning given that term in section 1151 of title 18, United States Code;

(4) "Indian tribe" has the meaning given that term in section 4 of the Act of January 4, 1975, 88 Stat. 2204, 25 U.S.C. 450b (as amended);

(5) "law" includes federal, state and tribal law and a regulation authorized by law;

(6) "offense" means an offense against the United States and includes a violation of a Federal regulation relating to part or all of Indian country, and

(7) "Secretary" means the Secretary of the Interior.

Sec. 4. Indian Law Enforcement Responsibilities.

(a) The Secretary, acting through the Bureau of Indian Affairs (BIA), shall be responsible for providing, or for

assisting in the provision of, law enforcement services in Indian country as provided in this Act, including

(1) the enforcement of relevant Federal law and, with the consent of the Indian tribe, tribal law;

(2) in cooperation with appropriate Federal and tribal law enforcement agencies, the investigation of offenses against criminal laws of the United States;

(3) the protection of life and property;

(4) the reduction of the incidence of crime which adversely affects the quality of life;

(5) the development of methods and expertise to resolve conflicts and solve major crimes;

(6) the provision of criminal justice remedial actions and rehabilitation;

(7) the reduction of recidivism and adverse social effects;

(8) the development of preventive and outreach programs which will enhance the public conception of law enforcement responsibilities through training and development of needed public service skills;

(9) the assessment and evaluation of program accomplishments in reducing crime; and

(10) the development and provision of law enforcement training and technical assistance.

(b) The Secretary shall carry out his responsibilities under subsection (a) in active cooperation with the Indian tribes and, in consultation with the tribes, shall adopt regulations which shall require, and establish a procedure for, active cooperation and consultation of BIA law enforcement personnel assigned to an Indian reservation with the governing body of the Indian tribe located on such reservation.

(c) In providing law enforcement services or assistance under this Act, the Secretary shall comply with the requirements of the Indian Self-Determination and Education Assistance Act.

Sec. 5. Law Enforcement Personnel: Standards: Pay Comparability.

(1) The Secretary shall establish appropriate standards of education, experience, training, and other relevant qualifications for law enforcement personnel who are charged with law enforcement responsibilities pursuant to this Act.

(2) The Secretary shall also provide for the classification of such positions at GS grades, as provided in section 5104 of title 5 U.S.C., consistent with the responsibilities and duties assigned to such positions and with the qualifications established for such positions.

(3) In classifying positions as provided in paragraph (2), the Secretary shall ensure that such positions are classified at GS grades comparable to those for other Federal law enforcement personnel in other Federal agencies in light of the responsibilities, duties and qualifications required of such positions.

Sec. 6. Law Enforcement Authority.

The Secretary may charge an employee of the BIA or an employee of a tribal organization which has contracted law en-

forcement responsibilities under the Indian Self-Determination and Education Assistance Act with such law enforcement responsibilities and may authorize such employee to do any of the following:

(1) carry firearms;

(2) execute or serve warrants, summonses, or other orders relating to a crime committed in Indian country and issued under the laws of the United States (including those issued by a Court of Indian Offenses under regulations prescribed by the Secretary) or of an Indian tribe if authorized by the tribe;

(3) make an arrest without a warrant for an offense committed in Indian country --

(A) in the presence of the employee; or

(B) if the offense is a felony and the employee has reasonable grounds to believe that the person to be arrested has committed or is committing the felony;

(4) offer and pay a reward for services or information or purchase evidence assisting in the detection or investigation of the commission of an offense committed in Indian country or in the arrest of an offender against the United States;

(5) make inquiries of, and administer to, or take from a person an oath, affirmation, or affidavit, concerning any matter relevant to the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the employee to enforce or carry out its laws;

(6) wear a prescribed uniform and badge or carry prescribed credentials;

(7) perform any other law enforcement related duty; and

(8) when requested, assist (with or without reimbursement) any Federal, tribal, State or local law enforcement agency in the enforcement or carrying out of the laws and regulations they enforce or administer, provided that the consent of the Indian tribe must be obtained for assistance to any State or State subdivision.

Sec. 7. Assistance by Other Agencies.

(a) The Secretary may enter into an agreement for the use (with or without reimbursement) of the personnel or facilities of a Federal, tribal, State, or other government agency to aid in the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the Secretary to enforce its laws. The Secretary may authorize a law enforcement officer of such an agency to do any of the things which the Secretary may authorize under this Act.

(b) Accord with U.S. Attorney General. An agreement under this section relating to the enforcement of the criminal laws of the United States shall be in accord with an agreement between the Secretary and the Attorney General of the United States.

(c) Tribal Consent. Any agreement under this section shall be in accord with written consent of the governing body of the tribe with jurisdiction over the area of Indian country to which the agreement applies.

(d) 31 U.S.C. 1535; Limitations on Inter-Agency Agreements; Exemption. Notwithstanding the provisions of

section 1535 of title 31, United States Code, the head of a federal agency with law enforcement personnel or facilities may enter into an agreement (with or without reimbursement) with the Secretary under subsection (1) of this section.

(e) Agreements with Indian tribes. The head of a federal agency with law enforcement personnel or facilities may enter into an agreement (with or without reimbursement) with an Indian tribe relating to the tribe's law enforcement authorities or carrying out of a law of either the United States or the tribe.

(f) Status of Non-Federal Personnel Under Agreements. While acting under authority granted by the Secretary under subsection (a) of this section, a person who is not otherwise a federal employee is deemed an employee of the Department of the Interior only for purposes of section 3374(c)(2) of title 5, United States Code, and sections 111 and 114 of title 18, United States Code; and an "eligible officer" under subchapter III of chapter 81 of title 5, United States Code.

(g) Authority In Addition to Self-Determination Act. The authority to enter into agreements under this section is in addition to, and not in derogation of, the authority of the

Secretary and of Indian tribes to make contracts under the Indian Self-Determination and Education Assistance Act.

Sec. 8. Regulations.

After consultation with the Attorney General of the United States and Indian tribes, the Secretary may prescribe regulations under this Act relating to the enforcement of criminal statutes of the United States.

Sec. 9 Jurisdiction.

(a) Secretarial Jurisdiction; Agreement with Attorney General. The Secretary shall have investigative jurisdiction over offenses against criminal laws of the United States in Indian country subject to an agreement between the Secretary and the Attorney General of the United States.

(b) Cooperation with Other Agencies. In exercising the investigative authority conferred by this section, the BIA's personnel shall cooperate with the law enforcement agency having primary investigative jurisdiction over the offense committed.

(c) Savings Provision. This Act does not invalidate or diminish any law enforcement commission or other delegation of authority issued under authority of the Secretary before enactment of this Act.

(d) Preservation of Jurisdiction and Authorities. The authorities provided by this Act are in addition to, and not in derogation of, any existing authority, including, but not limited to the Indian Self-Determination and Education Assistance Act. This Act alters neither the civil or criminal jurisdiction of the United States, Indian tribes, States or other political subdivisions or agencies, nor the law enforcement, investigative, or judicial authorities of any Indian tribe, State, or political subdivision or agency thereof, or of any department, agency, court, or official of the United States other than the Secretary.

Sec. 10. Source of Funds.

Any expenses incurred by the Secretary under this Act for law enforcement purposes shall be paid from amounts appropriated under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

Sec. 11. Demonstration Projects in Highway Safety.

The Secretary shall consult with Indian tribes regarding the problems of highway safety in Indian country and shall develop a plan to provide financial and technical assistance for the development of three to five demonstration programs for improving highway safety sponsored by Indian tribes or tribal organizations. The Secretary should include funding for such projects in the budget request for the BIA beginning in fiscal year 1991. Consultation with the tribes and the selection of applicants for the demonstration projects shall be accomplished during fiscal year 1990. Of the projects selected, at least one should be in an area in which the tribe and federal government have jurisdiction over Indians to the exclusion of the states, and at least one should be in an area in which a state has concurrent jurisdiction over Indians. Each selected demonstration program shall include a training component and a community education component and each such program shall submit to the Secretary a report which the Secretary shall transmit to the Congress, containing recommendations for strategies to reduce the number of motor vehicle related deaths and injuries that occur on the highways in Indian country.

Sec. 12. Tribal Consent

Notwithstanding any other provision of this Act, the authority to provide law enforcement services or exercise any law enforcement investigative jurisdiction in any area of the Indian country and to charge employees of the Bureau of Indian Affairs with authority to perform law enforcement duties shall be subject to approval by the Indian tribe or tribes exercising jurisdiction over such area of the Indian country and shall not be exercised except in accordance with such approval.

SECTION BY SECTION ANALYSIS

Sec. 1. This is the short title of the bill, the "Indian Law Enforcement Reform Act of 1989."

Sec. 2. Congressional Findings and Declaration of Policy. This section states congressional findings that the maintenance of law and order and the administration of justice are fundamental to true self-determination, that the exercise of such authority by Indian tribes is consistent with the treaties between Indian tribes and the United States and with the federal policy of Indian self-determination, and that the federal government's performance of its law enforcement responsibilities within Indian country generally has been inadequate and ineffective. This section declares as a matter of policy that the United States has an obligation to provide for and to assist Indian tribes in establishing an effective system of law enforcement within Indian country.

Sec. 3. Definitions. This section sets forth definitions for the purpose of this Act.

Sec. 4. Indian Law Enforcement Responsibilities. This section codifies the law enforcement authority of the Secretary of the Interior within Indian country, which is to be carried out through the Bureau of Indian Affairs and through contracting with Indian tribes pursuant to the Indian Self-Determination

Act. This section also directs the Secretary, in consultation with Indian tribes, to promulgate regulations to establish a procedure for active cooperation and consultation between BIA law enforcement personnel assigned to a reservation and the tribal governing body with jurisdiction over such reservation.

Sec. 5. Law Enforcement Personnel; Standards; Pay Comparability. This section directs the Secretary to establish standards of education, experience, training, and other relevant qualifications for BIA and tribal law enforcement personnel and to ensure that GS grades for BIA law enforcement personnel are comparable to those for other Federal law enforcement personnel.

Sec. 6. Law Enforcement Authority. This section delegates to the Secretary the specific authority to authorize BIA and tribal law enforcement personnel to engage in certain listed activities in carrying out their duties, including carrying firearms; serving warrants, summonses and other orders; making arrests without warrants; conducting investigations; and performing other law enforcement related duties. While the authority for BIA law enforcement personnel to engage in such activities has long been presumed to exist, this section would remove any doubt that may exist. With respect to tribal law enforcement officers, no such specific authorization is needed for the enforcement of tribal laws; this section would remove any doubt that may exist with respect to the enforcement of Federal laws by tribal personnel.

This section also specifies that law enforcement personnel carrying out the authority of the Secretary may, on request, assist any Federal, tribal, State or local law enforcement agency, provided that assistance may be rendered to any State or subdivision of a State only with the consent of the appropriate Indian tribe. Note that under section 12 tribal consent is required for BIA exercise of these authorities.

Sec. 7. Assistance by Other Agencies. This section authorizes the Secretary to enter into agreements for the use of the personnel or facilities of any Federal, tribal, State, or other government agency to assist in the enforcement of federal and tribal laws in Indian country, provided that any Indian tribe having jurisdiction over the area to which any such agreement applies has given its written consent to such an agreement. In addition, such agreements must be in accord with an agreement between the Secretary and the Attorney General of the United States. This section also authorizes agreements between Indian tribes and federal law enforcement agencies other than the BIA.

Sec. 8. Regulations. This section authorizes the Secretary to promulgate regulations relating to the enforcement of the criminal laws of the United States in Indian country pursuant to this Act. Consultation with the Attorney General of the United States and Indian tribes would be required prior to the promulgation of any such regulations.

Sec. 9. Jurisdiction. This section provides that the Secretary has investigative jurisdiction regarding offenses against the criminal laws of the United States in Indian country and directs the BIA's personnel to cooperate with the law enforcement agency having primary jurisdiction for such investigations, i.e., the Federal Bureau of Investigations. In addition, this section specifically states that this Act does not change the civil or criminal jurisdiction currently vested in the United States, Indian tribes, or the States and their political subdivisions. Note that under section 12 tribal consent is required for the exercise of these authorities.

Sec. 10. Source of Funds. This section states that the source of funds for expenses incurred by the Secretary under this Act shall be funds appropriated under the Act of November 2, 1921, commonly known as the Snyder Act (42 Stat. 208; 25 U.S.C. 13).

Sec. 11. Demonstration Projects in Highway Safety. This section directs the Secretary, in consultation with Indian tribes, to develop and carry out a plan to establish three to five demonstration projects for improving highway safety, to be sponsored by Indian tribes or tribal organizations. Each tribe or organization selected as a sponsor of such a demonstration project would be required to submit a report to Congress, through the Secretary, making recommendations for strategies to reduce the number of motor vehicle related deaths and injuries that occur on the highways in Indian country.

Sec. 12. Tribal Consent. This section provides that the authority of the Secretary to provide law enforcement services and to carry out law enforcement investigative jurisdiction within any area of Indian country, and the authority to charge employees of the BIA with carrying out these law enforcement duties, shall be subject to the approval of the tribal governing body having jurisdiction over that area of Indian country.

TESTIMONY PRESENTED TO

SENATE SELECT COMMITTEE OF INDIAN AFFAIRS

ON H.R. 498, THE INDIAN LAW ENFORCEMENT REFORM ACT

BY CHIEF TONY ZECCA
MICCOSUKEE TRIBAL LAW ENFORCEMENT PROGRAM

JULY 21, 1989

24-761 0 - 90 - 6

Chairman Inouye and members of the Committee it is an honor to have the opportunity to present the views of the Miccosukee Tribe of Florida on H.R. 498, The Indian Law Enforcement Reform Act. My name is Tony Zecca and I have been Chief of Police of the Miccosukee Tribal Police Department for the past 13 years and started the program for the Tribe. I retired from the New York City Police Department after 20 years of service, the last 5 of which I was promoted to a Detective Investigator under the New York City Department of Investigations, New York County District Attorneys Racket Squad. Thus, my views on some of the issues in H.R. 498 and the state of affairs in BIA and tribal law enforcement are based upon more than 33 years of professional law enforcement experience.

Mr. Chairman, as you know, Florida is a P.L. 280 state. I think our law and order program is respected by Federal and State jurisdictions because we have a history of working cooperatively and responsibly with both Federal and State authorities to investigate crimes and apprehend and arrest violators. Cooperation between jurisdictions is absolutely essential in Florida, particularly because of the war on drugs. Since we work very closely with the FBI, U.S. Customs, State and County law enforcement agencies in the investigation of crimes, I recently discussed this bill as it pertains to criminal investigations with the local FBI agent. He agreed that the Tribe is doing a good job

of enforcing Title 18 of the U.S. Code as well as Title 36 which covers the National Park Service and sees no reason to change the situation. The U.S. Attorney of the Southern District accepts and prosecutes cases presented by Miccosukee Police officers, evaluating on a case-by-case basis, as they do with all federal agencies on when to go forward or decline prosecution. On May 17, 1989, I attended a meeting between Mr. Bennett, the "Drug Czar" and Florida law enforcement officials where the need for closer and more efficient sharing of information and cooperation between all Florida law enforcement officials, including the Tribes, was also stressed for the war on drugs.

At Miccosukee, we normally handle investigations for State and Federal authorities to the extent that we can do so without exercising subpoena powers which we do not have. In recognition of the Tribe's law enforcement capability, the Florida State legislature recently amended State law to grant Tribal police the authority to enforce State traffic laws both on and off the Reservation. To appreciate the significance of this, you must keep in mind that the Miccosukee Indian Reservation is located within a few hours drive from Miami, Dade County and is thus affected by the illegal drug activity in the area. Interstate 75 and U.S. 41 are major thoroughfares from the East to the West coasts of Florida and these routes run through the Reservation. I-75 is currently under construction and the State Department of Transportation recently advised the Tribe that the daily traffic flow on these

routes will reach 15,000 cars per day by 1990. The Tribe has stated to the Congressional Appropriations Committees, that we are in desperate need of additional tribal law enforcement funds to handle this aspect of law enforcement which is a key in the effort to control drug trafficking.

Mr. Chairman, we agree with the provisions of H.R. 498 which codify and clarify the authority of BIA law enforcement officials. In particular, the language of Section 3055 of Title 18, United States Code should be amended to provide tribal police officers who are commissioned as special officers of the Bureau of Indian Affairs the authority to investigate all crimes committed on reservations. At present, the statute only provides the authority to investigate and suppress liquor traffic on reservations. As a matter of practice, however, tribal officers at Miccosukee routinely handle all investigation of crimes, with the exception of homicides, which we do not handle because of personnel and equipment limitations.

As an example of the problems created by the current language in Section 3055, Title 18 of the United States Code, I'd like to discuss a significant case at Miccosukee. This involved a particularly serious assault on a Tribal police officer with a firearm by a non-Indian. The Tribal Police Department attempted, together with the local FBI agent to file charges with the U.S. Attorney because the Tribal police officer was commissioned as a

federal BIA special officer. In addition, a federal government vehicle was involved and the incident occurred at a Tribal business on the reservation.

Thus, we reasoned that the federal court was the proper jurisdiction to bring this matter to trial. The U.S. Attorney, in reviewing the evidence declined to prosecute the case, stating that Section 3055 of Title 18, United States Code does not give authority to a tribal officer to enforce laws other than liquor traffic. Mr. Gene Suarez, then BIA Chief Law Enforcement Officer was consulted on this case and intervened with the U.S. Attorney to urge prosecution. The U.S. Attorney reasoned that this type of case could not withstand an appeal because of the limitations of Title 18 and therefore would not prosecute.

Consequently, because we are a P.L. 280 State, the case was prosecuted by the State Attorney Generals Office in State court and the subject was sentenced to 45 years in prison. Were we not a P.L. 280 state, this particular crime and others like it would have gone unprosecuted. I think this incident illustrates a critical gap in the current law which must be addressed.

What we basically have, Mr. Chairman, is two separate and conflicting views of the authority of tribal police under federal commissions. As I explained in the previous example, the U.S. Attorney does not accept that Tribal police officers who are

commissioned as BIA Special Officers are federal officers. On the other hand, the U.S. Attorney and Federal Court routinely accept Tribal Police Officers as federal officers under their National Park Service Commissions. This is based upon a legal opinion rendered by U.S. Federal Judge Thomas Scott. We recommend to the Committee that Section 3055 of Title 18 of the United States Code be clarified so that all federal agencies are consistent on this point.

I would like to address three aspects of H.R. 498 which are of concern to Miccosukee and provide our recommendations for modifications to the legislation.

I. Non-contractibility of the Criminal Investigation Function:

The Miccosukee Tribe strongly opposes the provision of the legislation which would prevent tribes from contracting the criminal investigations component. This is a marked departure from the intent of Congress under recent amendments to the Self Determination Act, which we understood were to strengthen the Tribe's ability to contract for all BIA programs.

Recommendation: The Miccosukee Tribe strongly recommends that this provision of the bill be deleted.

II. Line-Authority for Supervision of Criminal Investigators:

The Miccosukee Tribe strongly opposes the provision of the bill which would place all BIA criminal investigators under direct supervision of the BIA Central office. The effect of this would simply be to add another layer of bureaucracy to the system resulting in less efficiency. We are also concerned that this could result in funds being diverted from tribal programs to the central office. In our opinion, the thrust of the efforts to improve law enforcement on Indian reservations should emphasize additional training and personnel support for tribal programs rather than building up the central office bureaucracy.

As a philosophical matter, we are concerned that this change would also exempt a critical law and enforcement function from being directly accountable to tribal governing bodies. In my opinion, all law enforcement programs should have to answer to a governing body and be accountable for their actions. I think it is unsound policy and potentially dangerous to create another layer of bureaucracy which is answerable only to the BIA Chief of Law Enforcement.

In addition, the practical aspects of criminal investigation have to be considered. Mr. Chairman, there is only one way to learn law enforcement and that is the hard way -- in the field. Each reservation is unique and has a different set of circumstances which have to be learned by officers in the field who in the

process develop credibility and a level of trust with the local population which an "outsider" simply would not have. Local law enforcement officials are the best equipped to handle these situations and that's where the authority should lie. Instead of centralizing criminal investigations in the BIA as is proposed in H.R. 498, we should be making every effort to de-centralize and establish local control as much as possible.

Recommendation: At present, the Secretary of Interior has the authority to directly supervise BIA criminal investigators if this is deemed necessary under special circumstances. We recommend that the Committee strike the provision of H.R. 498 which would require mandatory central office supervision and line-authority of criminal investigators in favor of existing law which is adequate to handle situations on as "as needed basis."

III. Advisement to Tribes of Investigations Terminated or Declined:

We understand that the original version of H.R. 498 included a provision which would have required the U.S. Attorney or federal authorities to advise tribes when investigations have been terminated or declined for prosecution if there is reason to believe the offense could be prosecuted under tribal law. We also understand that this provision was dropped because of concern that this would reveal confidential sources.

We would urge the Committee to include this provision in the Senate bill. At Miccosukee there are occasions when cases declined by the U.S. Attorney can and should be tried in Tribal court. We are puzzled about the reluctance of the administration to support language which would require the sharing of information with tribal investigators when there is a solid basis for tribal prosecution. This gets back to my original point that effective administration of justice on Indian reservations is critically dependent upon close cooperation between federal, tribal and state law enforcement officials.

Recommendation: I recommend that the Committee include a provision in the Senate bill to require that files be turned over to tribes when there is reason to believe that prosecution could occur in the tribal court. Addressing the issue of confidentiality can be handled very easily by adding two qualifications standardly used by law enforcement officials:

(a) do not require the release of any files which are related to an active investigation and

(b) delete the names of confidential sources when files are turned over to tribal authorities.

In summary, we urge the Committee to rework H.R. 498 so that the provisions which are objectionable to Miccosukee and many other Indian Tribes are satisfactorily addressed in the Senate bill. Mr.

Chairman, thank you for the opportunity to present the views of the Miccosukee Indian Tribe on H.R. 498. I would be happy to answer any questions the Committee may have.

TESTIMONY

FOR: The Senate Select Committee on Indian Affairs
Honorable Senator Daniel Inouye

RE: HR 498 - "INDIAN LAW ENFORCEMENT REFORM ACT"

DATE: July, 1989

SUBMITTED BY: Ramah Band of Navajo Tribe - Whose members are present today.
Mrs. Martha Garcia, Chapter President
Mr. Nelson Thompson, Council Delegate

The Ramah-Navajo Department of Public Safety shares the same concerns of the Navajo Nation Department of Public Safety on the provisions of HR 498 on the issue prohibiting the contracting of Criminal Investigators' positions under 93-638 and other areas, including the U.S. Attorney's report disclosures.

It is apparent, that the Bureau of Indian Affairs contracted Law Enforcement and Detention programs with Tribes an detailed demanding contracts, but failed to appropriate adequate funding to meet those terms and in addition provided Tribes with substandard facilities and equipment. There were no provisions made to meet the demands of growing communities with growing problems nor to handle inflation and general costs of living. Funding appropriated with the contracts cannot replace equipment or facilities as they deteriorate with age and daily use despite care and maintenance.

The United States Government, through the Bureau of Indian Affairs needs to support and assist the Tribes by properly funding them to meet standards, especially in the areas of Detention Services. This would enhance the overall welfare of all people under Law Enforcement and Detention Services. Added funding is an absolute necessity at this point.

TESTIMONY

FOR: The Senate Select Committee on Indian Affairs
Honorable Senator Daniel Inouye

REGARDING: HR 498 - INDIAN LAW ENFORCEMENT REFORM ACT

SUBMITTED BY: Beverly Aragon, Chief of Police
Ramah-Navajo Dept. of Public Safety

DATE: July, 1989

Since the onset of PL93-638 it was felt that it was a step in the right direction - that of "Indian Self Determination", however Amendments and new Acts continue to pose new problems as well as create more questions on the part of the contractor as to "What are the Bureau's motives?" or what are our goals?

The Ramah-Navajo Chapter voices its concerns on the following issues, many of which have become repetitious in the last year, but to which we have yet to receive Response or Relief.

1. In the initial stages of PL100-472, the emphasis (supposedly) was to have as much input from the tribes to jointly draw up what would be the regulations to assure compliance and complete understanding and agreement by the tribes. In the interim report (on FY1990 Interior and Related Agencies Appropriations Bill), the contractor is being penalized for the neglect (on the Bureau's Part) to provide necessary information on General Liability Insurance costs. Whereby it is reported that the House Interior Subcommittee did not provide any money for the purchase of General Liability Insurance because it had not yet received a report from the BIA (and IHS) regarding estimated costs to provide insurance.

This again brings up the issue that the Bureau of Indian Affairs is neglecting its responsibilities and yet the contractor is who will be penalized.

Presently in the Albuquerque Area, there are several items of importance pending on the issuance of Police Professional and General Liability Insurance. One of these issues is pending litigation whereby an individual has filed a law suit against two (2) police officers for doing their duty while assisting another agency. The bureau assumes no responsibility for the officers' defense and at the last Law Enforcement Quarterly Meeting in Ignacio, Colorado, went to some length to explain the Bureau's position and the protection (or lack thereof) provided by the Federal Government. This type of lawsuit will continue and we can probably expect an increase because of the nature of our work, the trends by offenders (to try to make a dollar off the Police), and the continued cooperation between agencies to assist each other during peak times of activity (feasts and celebrations) within their respective agencies because of the sizes of departments, the remoteness of rural communities, and the continued criminal activity on the reservations. This type of cooperation is urged by the Bureau, and in fact the area office has assisted in soliciting assistance from one police department to another. We are happy to help each other out, but how long will the Bureau have the luxury of bowing out gracefully, because they are protected by the federal government, and leave the small contractors on their own?

Another issue pending provisions of Liability Insurance is that of cross commissioning with the State of New Mexico. The State Police requires that every Police Department have Liability Insurance before it will issue State Peace Officer commission cards. This is a viable request, however the contractors do not have the funding necessary to provide Police Professional Liability Insurance. On the Ramah-Navajo contract, one of the terms is that the contractor provide insurance, however there was no money appropriated for it. For a department of 10-13 on staff, an estimated $30,000 dollars is needed to provide one year of insurance. The Ramah-Navajo Law Enforcement Contract does not have that money, and it was hoped, (as proposed in PL100-472) that the Secretary would appropriate the funding effective FY1990. If a survey is done of all the contract tribes in the Albuquerque Area, you will find that 90% or better do not have Police Professional Liability Insurance and can presently not afford it, so we continue to do our job without it.

According to our contracts, we are to be monitored by and receive technical assistance from Superintendants and Criminal Investigators. Would the issue of insurance not be a concern or is it being ignored for any particular reason?

Request: The Ramah-Navajo Chapter respectfully requests that the committee reconsider proposed language to delay providing general Liability Insurance for tribes and seek to appropriate funding to assist contractors with this major expense beginning FY1990.

2. The Ramah-Navajo Chapter has reviewed HR498, The Indian Law Enforcement Reform Act, and wishes to go on record that it disagrees with the prohibition against tribes to contract the Criminal Investigators Positions.

The Bureau continues to take funding from our contracts to provide the Criminal Investigator to our agency, however the Criminal Investigator is not providing what we feel is essential coverage. Response time is poor, (2 hours or more), Reports are slow or never, hestitation to investigate any felony other than a violent death or bloody scene, negative attitude, etc. Either the case loads are excessive, or necessary attitude is just not there. If, under HR 498, the Criminal Investigators report to no one, but Washington, we can only anticipate more problems unless diligent effort is made to provide a Criminal Investigator to work full time for each agency or hire enough Criminal Investigators to lower their caseload.

Request: The Ramah-Navajo Chapter respectfully requests that language be proposed so that the Bureau cannot take funding from Law Enforcement contracts to provide Criminal Investigator services, and that Tribes not be prohibited from contracting Criminal Investigator services and at least have a voice as to the Criminal Investigator requirements.

3. The Ramah-Navajo Chapter has had a contract with B.I.A. under PL93-638 since 1986 to Provide Law Enforcement and Detention Services to the Ramah-Navajo Community. For the past year, we have diligently sought to obtain financial assistance for this program because the terms of the contract cannot be met with the funding appropriated for this contract. The facilities and equipment are substandard and have gradually become unsafe, obsolete, or ineffective, and there is no money in the contract to provide replacement.

A) We have sought relief from the Bureau and have received little. (attachments)
B) We testified at the congressional hearing in Santa Fe in September of 1988, and expressed our concerns to Congressmen Richardson and Hale. (attachments)
C) We testified before the Appropriations Subcommittee in Washington in March of 1989 before the Honorable Sidney Yates. (attachments)
D) In August of 1988, we signed our contract under protest, citing that the funding for FY1989 was not sufficient, however no response has been afforded us. (attachments)
E) On April 25, 1989 we met with Area Director Sidney Mills and voiced our concerns about the lack of proper, safe equipment and vehicles and in fact did advise him at the time that if no relief could be found, that we would seek to Retrocede the contract.

The following have been and continue to be our major areas of concern:

1. Inadequate funding to meet the terms of the contract.
2. Unsafe vehicles and costly repairs.
3. Obsolete and Ineffective Communications Equipment.
4. Ineffective Criminal Investigator.
5. Lack of Insurance.
6. Lack of Proper facilities for Law Enforcement Services Personnel.
7. Lack of Proper Detention facilities especially for juveniles.

All of the above can be corrected with adequate funding. They are outlined in more detail on attachments. We have no other independent financial support from any other source.

Request: The Ramah-Navajo Chapter respectfully requests that the Senate Select direct the B.I.A. to provide adequate funding as justified to provide Law Enforcement and Detention Services to the Ramah-Navajo Community.

The Senate Select Committee on Indian Affairs
Honorable Senator Daniel Inouye
HR 498 - INDIAN LAW ENFORCEMENT REFORM ACT
July, 1989
Page 4

4. Presently, the Ramah-Navajo Department of Public Safety has, as its Detention facility - two holding cells with a capacity for 4 females and 6 males. This was intended to be used only for temporary Detention, however, with the tribal court system and the overcrowding of the other tribal detention facilities, persons have been detained here in excess of 48 hours. This facility does not meet minimum jail standards, however, there are no other alternatives when persons are potentially a danger to the community or to themselves. We have the proper staffing, but an inadequate and unsafe facility. The other major issue on detention is that of juveniles. We have experienced a rise in juvenile criminal activity resulting in arrest, however we seek (if possible) alternatives to incarceration, because the closest facility is more than 100 miles away, effecting even further expense to pay additional manpower to transport and the expense of transporting, and the time the officer spends out of the area has to be covered by someone else, adding overtime expense.

There is a facility at Pescado that reportedly had been modified for juvenile Detention however is not operating because of lack of funding. This would be a small and temporary solution, but would be a major help to our program if avenues could be explored into this juvenile Detention facility becoming a reality.

Request: The Ramah-Navajo Chapter respectfully requests that the Senate Select Committee direct the B.I.A. to provide assistance to the Ramah-Navajo and Zuni tribes to seek a solution to Detention problems.

The Ramah-Navajo Chapter thanks the committee for any and all considerations given these requests and also for being allowed this address.

TESTIMONY

BEFORE: The Senate Select Committee on Indian Affairs
Senator Daniel Inouye, Chairman

SUBMITTED BY: Ramah Band of the Navajo Tribe
Mrs. Martha Garcia, Chapter President
Mr. Nelson Thompson, Council Delegate

REGARDING: HR 498 - "Indian Law Enforcement Reform Act" and related law enforcement issues

The Ramah Band of Navajos, shares many of the concerns of the Navajo Nation regarding the provisions the HR 498. These concerns focus on tribal sovereignty/self determination issues, procedural issues; and on levels of funding provided to effect law enforcement in Indian Communities.

1. Sovereignty/Self-Determination: The specific injunction prohibiting the contracting of Criminal Investigator (CI) position/function is contrary to the respect for and rights of Indian communities -- it is counter to a government-to-government relationship and smacks of continued condescending paternalism on the part of the federal government toward Indian people. The F.B.I. already provides investigative functions for the federal government on Indian Reservations.

The Ramah Band, Laguna and Zuni pueblos, and the Albuquerque Area office have cooperated to design a C.I. services program that begins to meet the needs of our communities in a timely and efficient manner. The proposed legislation will undermine these efforts. The proposed legislation also undermines tribal sovereignty and sets back the gains towards self-determination Congress and Tribes have made.

Request: Section (a) BRANCH OF CRIMINAL INVESTIGATION. (2), lines 19 and 20 should be struck.

2. Procedural: Specifically, the reallignment of line authority directly to Washington, D.C. (Central Office) and the failure to have the C.I.'s provide reports to the Area/Agency/Tribal level weakens both investigative and regular law enforcement activities in Indian communities Without line authority local agencies/tribes cannot demand accountability and performance. Without required reports(ing) (specified by the local agency/tribe) local agencies/tribes cannot adequately coordinate, prioritize and deliver comprehensive public safety programming.

Request: Line authority to be retained at the local level (including the requirement that tribes/contractors be provided reports from the C.I.'s).

3. Funding levels: Tribes and local agencies have entered into contract with the BIA to provide Law Enforcement in their communities. Appropriately, various standards and code for law enforcement are in place and contractors are expected to maintain these. However, the BIA has (a) been unable to provide adequate annual operations base funding for proper delivery, (b) been unable to turnover the facilities, equipments, etc., necessary to remain in compliance with applicable standards/code related to law enforcement, and (c) been unable to provide the funds needed (in addition to annual operations base) by contractors to upgrade/effect necessary improvements in order to provide Law Enforcement services that meet standards/code.

Request: The BIA be directed to (a) conduct a comprehensive inventory/ survey to ascertain the funding needed to bring local Law Enforcement (BIA & Contractor) programs into compliance with standards/code;

(b) The BIA be directed to provide adequate annual base operations funding for the delivery of law enforcement services; and (c) The BIA be directed to provide special funds to Indian contractors to effect needed upgrades/improvements (similar to the FI & R program of Facilities Operations & Maintenance) in order to remain in compliance with standards/ code.

The Ramah Band of Navajos sincerely appreciates this opportunity to provide testimony on the critical issues facing law enforcement in Indian communities and thanks the members of the Committee for their time and concern.

TESTIMONY

FOR: Appropriations Subcommittee on Interior and Related Agencies
The Honorable Sidney Yates, Chairman

REGARDING: Indian Programs Related Appropriations for Fiscal Year 1990

SUBMITTED BY: Beverly Aragon, Chief of Police, Ramah Navajo Department of Public Safety

DATE: March 1989

The Ramah Navajo Chapter voices the following concerns regarding the Law Enforcement Program and the appropriation of funds for fiscal year 1990, for consideration of the Committee.

1. The Ramah Navajo Chapter entered into a contract with B.I.A. in 1986 under PL93-638 to provide Law Enforcement and Detention Services for the Ramah Navajo Community. Since that date, the B.I.A. has done little or nothing to make improvements or assist Ramah Navajos in Building and Improving the newly formed department. Granted, there have been problems with the department in stabilizing personnel, however there has been little assistance from the Bureau in implementing a quality Law Enforcement Program with progressive plans for growth. This is most obviously apparent in the equipment and facilities that are presently having to make do while the present administration (both the Chapter and the Police Chief) diligently request, pursue, and borrow equipment so as to try to provide law enforcement services for our community. The B.I.A. is very prompt in demanding the Ramah Navajos meet terms of the contract, such as deadlines for paperwork, etc., but when their assistance is requested in matters of acquiring equipment or other concerns, we meet with a deaf ear and blindness, and "everybody's hands are tied."

The Ramah Navajo Chapter and present Police Chief have made numerous requests for assistance, and in fact in this final year of contract accepted an inadequate budget under protest, (See Attachment 1) to the Albuquerque Area Office, but we have not even as much as received a response.

On September 1, 1988, Chapter Vice President, Rolland Ellsworth and Chief of Police, Beverly Aragon testified before a congressional hearing in Santa Fe voicing our concerns for the Law Enforcement Program (See Attachment 2) statement dated August 29, 1988. This statement was presented to Congressman Bill Richardson and Congressman Hale, whereby they asked that Mr. Sidney Mills, and Mr. Frank Adakai provide a response to our request within two weeks. We have yet to hear any response, with particular question as to why the Law Enforcement dollar amount has been cut every year.

REQUEST: The Ramah Navajo Chapter respectfully requests that the Committee direct the B.I.A. to expeditiously respond and justify the budget cuts they have arbitrarily made, thus not allowing enough money for the contractor to procure and maintain equipment and operate the program successfully.

2. The Ramah Navajo Law Enforcement contract provides general Law Enforcement Services, with the Criminal Investigations to be done by a Criminal Investigator out of the Albuquerque Area Office. For the past three years, monies have been taken out of our Law Enforcement Contract to fund a Criminal Investigator that is to provide services to Ramah, Zuni, and Laguna. In October of 1988, we finally started receiving the services of a Criminal Investigator stationed in Laguna, which we have welcomed, however, the following have been and still continue to be our problems.

a. Poor response, or no response from the Criminal Investigator when called. It has taken anywhere from three hours to six hours or longer for a Criminal Investigator to arrive after being called.

b. The lackadaisical attitude of the Criminal Investigators responding is appalling.

c. The Criminal Investigators are not providing dispositions on cases to the local department nor the chapter officials.

d. The only cases the Criminal Investigators are responding to are those involving deaths or extremly violent crimes. In calendar year 1988, seventy (70) felonies were reported to the Ramah Navajo Police Department, however, only six were investigated by Criminal Investigators, and only four were taken to the U.S. Attorney.

d. These statistics do not include a number of child abuse/neglect cases that Social Services processed without the assistance of Law Enforcement. With the present staff there is very little time to follow up on burglaries, thefts, assaults, etc. that also need follow up as well as the juvenile problems, drugs, and alcohol abuse and bootlegging. B.I.A. does not want to bother with these problems or never cares to follow up.

Criminal Investigators have responded to calls only when absolutely necessary and have arrived here hours later, without necessary equipment, done preliminary investigations and then never return to follow up on other underlying causes and problems. Their reports are rarely submitted for review by Chapter Officials to enable them to answer questions to their constituents, and the few reports we have received reflect their poor attitude, thus inspiring the low opinion by local officials.

REQUEST: The Ramah Navajo Chapter respectfully requests that the Committee direct the B.I.A. to appropriate sufficient additional funding to staff and train an in-house full time Criminal Investigator to follow up on all felony cases and major crimes. To be able to do this, an approximate $60,000.00 is needed to fund the Criminal Investigator's salary, training and equipment, this would be for only one year. This position needs to be added on to the present contract and continued funding in future contracts.

3. Appropriate funding for Insurances - With the existing contract, there has not been adequate funding appropriated for the contractor to provide Insurances as required. There was no funding appropriated for Police Professional Liability Insurance nor Vehicle Insurance. The contractor was forced to make modifications by not staffing much needed manpower in order to meet the financial expenditure to provide Insurance. These needs may be met with the New Amendments (PL 100-472).

REQUEST: The Ramah Navajo Chapter respectfully requests that the Committee direct the B.I.A. to appropriate adequate funding to the Ramah Department of Public Safety to meet the financial burden of Insurance which approximates in excess of $15,000.00 annually.

4. Safety Equipment - With the ever growing potential for violence in the Rural Areas, we need not look further than our own areas to express the importance of personal safety equipment for officers. In 1988 there were more than five Tribal Officers shot or killed in ~~the~~ on Surrounding area. The Ramah Navajo Police Officers presently are wearing outdated and possibly ineffective body armor (Bullet Proof Vests), that were handed down used by B.I.A. in 1986. There has not been and still is not any funding for procurement of Body Armor or Safety Holsters for officers. One handgun has been replaced within the last six months with still others being utilized that are in poor condition. Here again there is no funding for replacement of these firearms. The aforementioned handgun is on a loan from area office. Attachments - re: Firearms Inventory

REQUEST: The Ramah Navajo Chapter respectfully requests that the Committee direct the B.I.A. to appropriate funding for the procurement of safety equipment needed by Ramah Navajo Police Officers at a rate of $1,000.00 each - totalling $6,000.00 for safety equipment (Body Armor, Batons, Helmets, Boots, Gloves, CPR Masks).

5. Communications Equipment - The Ramah Navajo Department of Public Safety provides Law Enforcement Services throughout a checkerboard area of approximately two hundred square miles. The Tribal Lands are intermingled with Private, State, and Federal Lands. The terrain is such that there are mountainous areas as well as remote valleys and hills. The Ramah Navajo Department of Public Safety currently operates its radio communications on the New Mexico State Police Frequency, however with our terrain there is an enormous amount of what we refer to as dead area, where radio signals cannot be received nor transmitted. The only way this communication can be improved is by installing a Repeater or extra Radio Towers in remote areas as well as replacement of obsolete and outdated equipment which again was handed down already in poor condition with the contract in 1986. In addition, it is imperative that efforts be made to improve the Radio Communication between the officer and the station as a part of the officers safety, this would include the purchase of hand-held radios that can be issued to and carried on the person of the officer should he meet with adversity where he cannot retrieve to the safety of his vehicle to summon assistance.

REQUEST: The Ramah Navajo Chapter respectfully requests that the Committee direct the B.I.A. to expeditiously, through its communications systems evaluate and appropriate adequate funding for the complete replacement of obsolete equipment and installation and implementation of modern reliable and effective equipment to include Microwave Towers or Repeaters, mobile units for police vehicles, and hand-held police radios for the Ramah Navajo Law Enforcement Program.

6. Law Enforcement Vehicles - As stated previously, the Ramah Navajo Chapter and Police Chief have sought diligently to replace vehicles presently being utilized for Law Enforcement and Detention Services. The vehicles being used are in atrotious condition. Most recently, a tragic accident has been the death of a female in custody, which can partially be attributed to the lack of proper equipment/vehicles for transporting of arrestees by Law Enforcement personnel in lawful discharge of their duties.

With the most recent changes in contracting of Criminal Investigators by the Navajo Tribe, information was received of the possible availability of excess B.I.A. vehicles. A request was made through proper channels for the reassignment of said vehicles if available, to the Ramah Navajo Department of Public Safety, however it appears that the B.I.A. is once again dragging its feet in providing any kind of response whether favorable or negative as to the availability or appropriation of any such vehicles to the Ramah Navajo Community (See Attachment 3).

REQUEST: The Ramah Navajo Chapter respectfully requests that the Committee direct that the B.I.A. diligently seek replacement vehicles or appropriate funding for the replacement of vehicles presently being utilized by the Ramah Navajo Law Enforcement Program, and that the Committee direct B.I.A. to implement and continue to appropriate funding for annual replacement of vehicles evaluated under G.S.A. standards needing replacement as per mileage and condition, so as to assist the contractor in conserving funding on maintenance and repair of vehicles annually.

7. Law Enforcement and Detention Facilities - Presently, the Ramah Navajo Law Enforcement Services are operating out of sub-standard facilities. The detention cells do not meet standards in areas of physical structure. The building itself is somewhat unsafe in that it is still being heated by boiler units that are in need of replacement and as recently as this past summer caused much concern over the wiring and smoke emitting from the units filling the building with smoke. We have no Juvenile Detention facilities at Ramah

The Administrative and Records Office are presently being housed in a 12 X 60 trailer that is inadequate and in such poor condition that the recent winds and weather have torn apart the exterior walls of the building, leaving much concern as to how much longer it will hold up before the complete structure gives way.

REQUEST: The Ramah Navajo Chapter respectfully requests that the Committee aid the Ramah Navajo Chapter by appropriating an adequate level of funding for this much needed program, and, that the Committee direct the B.I.A. to appropriate adequate funding for the replacement of buildings or provide adequate funding for remodeling of existing structures to meet minimum standards.

REQUEST: The Ramah Navajo Chapter on behalf of its Law Enforcement Program respectfully requests that the Committee, in evaluating funding needs not judge this program by its past downfalls, but consider its basic needs in that:

1.) It is more stabilized now.

2.) More enforcement action has been taken in the last six months than in prior years.

3.) The need for law enforcement in our community is continually increasing with an influx of more alcohol and drug abuse as well as national trends of cult activities involving youth.

4.) We are presently experiencing an increase in Juvenile criminal involvement.

5.) With the success of our present Crime Prevention Program, Community awareness has increased in many issues including child abuse, drug awareness, safety, crime watch, etc., thus facilitating more law enforcement activities.

6.) The Ramah Navajo Jurisdictional Area also includes portions of area and roadways traversed by commutants interested in the newly created El Malpais National Monument, as well as the existing El Morro National Monument, thus we are already seeing an increase in traffic which inevitably triggers an increase in accidents and other law enforcement issues. We also have ongoing community non-Indian in our jurisdictional area namely the town, Ramah, El Morro Park, Inscription Rock, Zuni Reservation Park, Pueblo of Zuni, Fort Wingate, Iron Gate, Timber Lake, and Smith, where the population is growing, thus increasing Law Enforcement Services.

The Ramah Navajo Chapter thanks the Committee for any and all considerations given these requests and expresses its gratitude in being allowed to address this Committee.

ATTACHMENT #1

Letter of Protest to Area
Director, Sidney Mills
Dated September 12, 1988

Outlining the inadequancy of the
budget allocated the Law Enforcement
Program for Fiscal Year 1989.

RAMAH DIVISION OF PUBLIC SAFETY
P. O. BOX 292
RAMAH NEW MEXICO 87321
(505) 775-3224

September 12, 1988

Mr. Sidney Mills
Area Director
Albuquerque Area Office
P. O. Box 26567
Albuquerque, NM 87125

Dear Mr. Mills:

August 23, 1988, we met with Bureau representatives for contract negotiations, and much to our disappointment, we were advised that our budget was cut once again from our originally submitted Z3B of $320,000. to $283,100.

We will sign the proposed contract amount (for Law Enforcement) of $283,100., however we do so Under Protest. We feel that our budget has been cut arbitrarily, with no justification for the reduction in dollar amount. Our community needs have increased, thus requiring additional duties in addition to our basic contract.

As is well understood, we are in the third year of a three (3) year contract, we are endeavoring to meet our position of this contract by providing service to our community, as described in the statement of work, specifically, 24 hour coverage, seven days a week, security and maintaining the peace as well as conducting preliminary investigations where warranted and effecting arrests and detention services. All of these services will have to be curtailed to some degree, imminently, the whole Ramah-Navajo community in its law enforcement services will be affected.

In order to meet our monetary needs to provide the necessary services to our community, we ask that careful consideration be given to our Law Enforcement Program with the following considerations:

1. We have an obligation to provide a service to more than 5000 people in our area; that service being to protect Life and Property

2. We have no other independent financial support from any other source.

3. We have no other Law Enforcement from any other agency on duty within our jurisdictional area, although neighboring agencies have responded to our calls for assistance, their response time being (1) one hour to several hours, or in the case of felony investigations, maybe days.

4. With the present number of officers on staff, we are barely meeting the needs of day to day operations, and in doing so we are paying excessive amounts of overtime, thus depleting our budget quickly and running down our personnel with physical and emotional stress, (because of the long hours).

As stated earlier, we are signing this contract for FY89 Under Protest and we ask that measures be taken to increase the budget of $283,100., whether it be through special programs, legislation, or otherwise, and we in turn will also explore all avenues to generate financial support for our Law Enforcement Program, so that the Ramah-Navajo community will not suffer.

Sincerely,

Martha Garcia, President
Ramah-Navajo Chapter

Rolland Ellsworth, Vice President
Ramah-Navajo Chapter

Clara Begay, Secretary/Treasurer
Ramah-Navajo Chapter

Nelson Thompson, Tribal Delegate
Ramah-Navajo Chapter

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ATTACHMENT #2

Copy of statement presented to Congressional Hearing in Santa Fe, New Mexico on September 1, 1988, by Chapter Vice President and Chief of Police to Congressman Bill Richardson and Congressman Hale, expressing concerns of the Law Enforcement Program and B.I.A.

ATTACHMENT 2

RAMAH DIVISION OF PUBLIC SAFETY
P. O. BOX 292
RAMAH NEW MEXICO 87321
(505) 775-3224

August 29, 1988

I

INTRODUCTION: Mr. Rolland Ellsworth, Vice President
Ramah-Navajo Chapter

Ms. Beverly Aragon, Chief of Police
Ramah-Navajo Division of Public Safety

II

The Ramah-Navajo community is a community of approximately 2300 Navajo people. This Community is comprised of several different cultures, with the majority being Navajo. For this reason, and that of human nature and the pressures of society in General, there is a need for Professional Law Enforcement as in any other community.

The Ramah-Navajo community has, in itself, some unique problems because of it's geographical location and its natural resources, "A Satellite Community", of the Navajo Nation, a Checkerboard Land Status (Navajo Tribal Land, Indian Allotment Land, Ramah Chapter Land, Fee Patent Land, State Land, BLM Land, U. S. Forest Land and Private Land) thus we cannot rely on other outside law enforcement agencies to provide immediate service to our residents. The Ramah-Navajo community also suffers the hardships of crime as does any other community. Many people outside of our community seem to think that the biggest problem that our community faces is that of Alcohol abuse, and they tend to think that controlling the traffic to and from the closest tavern to the Ramah-Navajo reservation is the key to curbing that problem. They may be right. This is one step in the right direction, but only one step. The Ramah-Navajo community suffers from every crime as any other community. From Murder and Rape to theft and drug problems. Perhaps not in the great degrees that they do in larger communities, but don't think that we are immune. We provide service to all cultures throughout our area including two (2) school districts from K-12 in 2 different counties, with an enrollment totalling nearly 1000 children.

III

In 1986, the Ramah-Navajo chapter entered into a contract with the Bureau of Indian Affairs to provide Law Enforcement, for the people of the Ramah-Navajo area, and to Provide Detention Services, under Public Law 93-638. In this contract there were specific requirements such as: 24 hour a day, seven days a week coverage, Provisions that the contractor shall provide "Insurances" and licenses as required, Provisions requiring "Key Personnel", and Provisions requiring "Specific equipment." All of these points are very well taken, however, allowances have not been made to maintain the requirements of this contract, through no fault of the Chapter. In essence, what has been done is that each year, the contract budget has been decreased with virtually no explanation. Granted, the Law Enforcement division has had its problems with the turnover of personnel, but that does not justify denying the program its necessities.

The problems in the Ramah-Navajo Community are not any less, in fact they have increased, and the demands of the people for a safer community and awareness have increased.

In Past years Ramah-Navajo chapter officials have set down with the Superintendent and entered monies in line items to be appropriated, yet when time comes to sit down for budget negotiations and final Budget approval, monies have been cut. Chapter officials have done everything they can to appropriate funding in the areas with deficiences, but to no avail.

We are outlining some of our problems in hopes that some relief can be afforded or suggestions for improvement. With the present budget, the terms of the contract cannot be met.

IV

In the light that B.I.A. still responds to investigate felony crimes committed on the reservation, and which we are thankful for, we still must contend with the following problems:

1. Poor response time - it has taken from 2 to 3 hours to more than ½ a day for a B. I. A. officer to arrive after being called.
2. With the excessive length of time of response, we face the loss of valuable evidence due to inclement weather and nature itself. Evidence is Contaminated.
3. Submittal of reports is slow or indefinite.

This is a Criminal Investigator responding out of the Albuquerque Area, not Zuni or Laguna.

Our basic concern is this: Starting from the original contract year, the Law Enforcement budget has been cut so drastically that with our present budget allotment, we have been forced to cut one position, (not meeting contract requirements in personnel), and we will be forced to cut down our Services and Equipment, also requirements of our contract. Case in point; from our originally submitted ZBB (FY89) of $320,000.00, we have an approved budget of $268,000.00. This is a drastic cut of $52,000.00. With the present salaries, and the present costs of supplies and utilities which we have no control over, the Ramah-Navajo Department of Public Safety cannot meet the terms of the contract with B.I.A. if an increase in total Budget allocation is not made. The Ramah Navajo Chapter is called upon to "Negotiate" on Contract Budgets, but yet, there is no negotiating done involving Ramah Navajo Chapter. The Bureau arrives and informs us on what they have decided and on what our final Budget approval is and the only discussion that Ramah Navajo Chapter is allowed is how we will spend what they have approved for us. Why is Ramah Navajo Chapter not involved in the decisions on final allotments before the final decisions are made? Why doesn't the Federal Government allow the Indian Tribes to have input and voice their needs before final budget allotments are made?

Our Equipment/Vehicles are also in dire need of repair/replacement, not to mention the poor condition of our detention building as well as our present Administrative and Records Offices'.

This equipment was transferred to Ramah-Navajo Chapter. It is not and was not then in Prime Condition, especially our Radio Communications equipment. It is outdated terribly, additionally we were promised (2) two four wheel drive vehicles last year (FY88) by the Area Special Officer in Charge and that did not materialize.

V

For three (3) years, monies have been taken out of our contract to fund a Criminal Investigator whom we are to be sharing with Laguna and Zuni. This program has never materialized, but our funds have been taken. The first year of this contract (FY87), the Criminal Investigator position was completely taken out and along with that, $44,000.00 was taken to justify a replacement for that position, (a cut from our contract budget).

The second year (FY88), $15,000.00 was taken, again for the Criminal Investigator, to be shared by Ramah-Navajo, Zuni, and Laguna. None of the three (3) Agencies have benefited from the assigned Criminal INvestigator, if in fact there is one assigned.

At this time we are again "Negotiating" our Contract budget, for FY89, and once again $15,000.00 is being cut from the Law Enforcement budget for a Criminal Investigator.

Ideally, the Ramah-Navajo Department of Public Safety could use a full time Criminal Investigator (if funded) not only to work felony crimes, but to investigate and follow up on current issues, problems that our community is currently facing; to name a few:

1. Bootlegging
2. Crimes against the elderly
3. Child abuse/Crimes against Children
4. Narcotics trafficking through the Ramah-Navajo Reservation
5. Juvenile Problems-dealing with drugs, cults, thefts, assaults, etc.

The task of following up on current problems cannot be accomplished with the present staff, as it requires many hours of time as well as techniques other than the routine of a uniformed Police Officer. At present, we are operating with only one officer on duty per shift, making it unsafe for the officer to begin with, but also making it nearly impossible to devote the time needed to properly investigate and follow up on the current concerns of our community, yet we cannot summon the assistance of Bureau Personnel because by definition these are not felony crimes, or criminal activity that they are willing to devote much time to. Other activities to be covered such as School functions of basketball/football games and other school activities also Traditional community functions such as squaw dances, rodeos, fairs and Revivals.

Current budget cuts have made it so that it is most difficult to even meet the "24 hour coverage" term of our contract, whereby (1) one officer's salary was not funded, making our staff even less. If our budgets had not been subjected to cuts, we would not have a projected $19,000.00 over-expenditure in FY87. This came about because the Area Special Officer assured Ramah-Navajo Chapter at last year's negotiations, that the $20,000.00 for a Criminal Investigator would not be taken and it was in fact taken from our contract budget. This over-expenditure will become outstanding once the Audit process is completed.

VI

Under this same contract, the Ramah-Navajo Division of Public Safety is to Provide a detention facility. This was also authorized by Tribal Resolution on the 14th day of July 1986. Primarily, it is the responsibility of the Navajo Tribe for providing Law Enforcement and Detention Services for its' people, however, when assistance was requested in 1988, although promises were made, no one showed up from the Navajo Police to help provide Law Enforcement to the Ramah-Navajo Community. In the past years, the Navajo Tribe has provided increases in budgets for Law Enforcement and detention services, however, none of those funds have been expanded in the Ramah-Navajo area.

Our present detention facility, although fully staffed as per contract, does not meet minimum standards, especially in the areas of Structual/Building requirements, with the same notations made by inspectors, "lack of proper ventilation, lack of exercise areas, inadequate facilities for conferences (lawyers, medical personnel, etc.) no monitoring system." We further do not meet minimum requirements on prisoner segregation as per felony/misdemeanant - both male and female. Although we are only a temporary "holding" facility, if situations should require that we temporarily "hold" a felon even if for a matter of minutes or hours, we have no further holding capabilities. We absolutely do not meet requirements to hold juveniles under any circumstance. We presently are required to transport juveniles to Tohatchi. Once a transport of any prisoner is necessitated, we have to pay overtime either for another officer to cover the street or to do the transport. We have been advised that if we shuld need detention services from the Navajo Tribe at another facility, we will be billed their established rate of $45.00 per day.

More consideration needs to be given to expanding and improving or even complete replacement of the present detention facility. ([redacted]).

VII

Another problem that has been encountered by the Ramah-Navajo has been the court system. Standards for the Tribal Courts need to be established, especially, where there is a complete tracking system from beginning to end. We don't have all of the solutions. Perhaps a full-time qualified judge would be a step in the right direction and standards for judicial proceedings such as "Peacemakers' Court."

VIII

One matter of concern is that of jurisdictional confusion. For the most part ours is not a matter of jurisdictional problems, but would like to address the issue of Commissions. At present, we, as a contract agency must obtain B.I.A. commissions, Tribal Commissions, and County Commissions, and appropriately could obtain B.L.M. and U.S. Forest and N.M. Game & Fish Commissions. Could a committee be formed to look into the possibility of one commission authorizing an officer under a contract such as the Ramah-Navajo Division of Public Safety with definition as to his jurisdictional boundaries?

Any and all considerations given this statement will be sincerely appreciated.

Thank you for your time and the opportunity to address the committee

24-761 0 - 90 - 7

PAGE 5 SIGNATURES

Martha Garcia, President
Ramah Navajo Chapter

Rolland Ellsworth, Vice President
Ramah-Navajo Chapter

Beverly Apagon, Chief of Police
Ramah-Navajo Division of Public Safety

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ATTACHMENT (1)

ATTACHMENT #3

Letter of Request for transfer of
B.I.A. excess vehicles dated
January 10, 1989.

RAMAH NAVAJO CHAPTER
Office of Grants and Contracts
Rt. 2, Box 13
Ramah, New Mexico 87321
(505) 775-3383/3384

MEMORANDUM

TO : Richard Evans, Superintendant
Ramah Navajo Agency

THRU : Beatrice Longhat, Property Officer
Ramah Navajo Agency

FROM : Beverly Aragon, Chief of Police
Ramah Division of Public Safety

RECEIVED
JAN 11 19[illegible]
RAMAH, NAVAJO
RAMAH, N. MEX.

SUBJECT: EXCESS VEHICLES

As per my conversation with you earlier today; on January 10, 1989, I contacted our contract officer in requesting that vehicles turned in by the C.I. assigned to Navajo Tribe be transferred over to our agency. She expressed that there should be no problem, that I should identify the vehicles we were requesting. I have identified the vehicles at the Chinle and Ft.-Defiance agencies. If you will assist me with the paperwork in transferring said vehicles to our inventory, it would be most appreciated. The following are the vehicle descriptions:

Vehicle #1: 1988 Chevrolet Blazer - Mileage: 15,544 at Chinle
Vin# 1GNEV18K8JF150267, B.I.A. ID# N00184638
U.S. Govt. Plate # I-148279
With radio, siren, and lights

Vehicle #2: 1988 Chevrolet Caprice - Mileage: 09021 at Chinle
Vin# 1G1BL5165JR162485, B.I.A. ID# N00184619
U.S. Govt. Plate # I-148281
With First Aid Kit, miscellaneous investigation supplies, including lights, siren, and radio.

Vehicle #3: 1988 Chevrolet Caprice - Mileage: 004204 at Chinle
Vin#1G1BL5160JR162488, B.I.A. ID# Noo184620
U.S. Govt. Plate #I-148282
With radio, siren, and lights

Vehicle #4: 1988 Chevrolet Blazer - Mileage: 38062 at Ft. Defiance
Vin# 1GNEV18K5JF124192, B.I.A. ID# n00186221
U.S. Govt. Plate # I-148270
With radio, lights, and siren

Vehicle #5: 1988 Chevrolet Caprice - Mileage: 021361 at Ft. Defiance
Vin# 1GBL5164JR165426
U.S. Govt. PLate # I-148280
With radio, lights, and siren

Vehicle #6: 1985 Plymouth/Chrysler - Mileage: 69310 at Ft. Defiance
Vin# 1P3BB2653EX623943
U.S. Govt. Plate # 148542

We are urgently requesting these vehicles because of the poor condition of the vehicles we presently have.

1. We presently have 6 vehicles issued to us. Of the 6, only 2 are in good shape. (1 1986 Sedan and 1 Dodge Ramcharger)

2. The 1986 Sedan is our low mileage car and presently has approximately 92,000 miles and just recently required repairs including carburetor replacement etc.

3. Our terrain is predominately dirt roads or unimproved. (Of 235 miles of roads, only 27 miles are paved and 40 miles gravel. The rest are unimproved dirt.)

4. The other 4 vehicles have over 100,000 miles on the odometers.

5. Approximately 3 weeks ago, one of the sedans caught fire (electrical) under the dash and the vehicle interior was completely gutted out and is beyond repair.

6. One of the sedans needs a complete front end and a complete brake job. It is presently unsafe, but in emergencies we do drive it.

7. We have been in the process (since August of 1988) of trying to lease some 4- wheel drive suburbans, but with the shortage reported by G.S.A. we still have not acquired them, and with the foul weather we are presently experiencing, these vehicles are not holding up very well and with every little strain are requiring costly repairs.

Thank you sincerely for your assistance. If you have any questions, please feel free to call me.

ACJY-143-89

Class "C" Resolution
No BIA Action Required.

RESOLUTION OF THE
ADVISORY COMMITTEE OF THE
NAVAJO TRIBAL COUNCIL

Supporting the Exercise of Tribal Sovereignty Through the Provision of Law Enforcement Services and Criminal Investigation of Serious Felonies by Navajo Department of Law Enforcement and Opposing Any Federal Legislation or Action Which Erodes That Sovereignty

WHEREAS:

1. The Advisory Committee of the Navajo Tribal Council possesses statutory authority to coordinate Navajo Nation appearances and testimony before Congressional Committees, 2 N.T.C. 343 (b) (6); and

2. H.R. 498, The Indian Law Enforcement Reform Act, a copy of which is attached hereto as Exhibit "A" and incorporated herein, was passed by the House of Representatives on May 23, 1989 and is currently scheduled to be considered at a hearing on July 21, 1989 before the Senate Select Committee on Indian Affairs prior to the Senate vote; and

3. H.R. 498 as written provides a statutory basis for Bureau of Indian Affairs law enforcement presence on Indian lands and prohibits the contracting by tribes of the criminal investigation function pursuant to P.L. 93-638, the Indian Self-Determination Act; the latter provision negates the opportunity for tribes to exercise an important aspect of tribal sovereignty, that is to participate with the United States Attorneys in the investigation and prosecution of serious felonies committed on the Navajo Nation; and

4. The Navajo Nation Department of Law Enforcement has contracted with the Bureau of Indian Affairs to assume the criminal investigation function on the Navajo Nation effective January 1, 1989 and H.R. 498, if passed, threatens, if not obviates, the Navajo Nation's authority to continue providing these services to the Navajo Nation; and

5. The report of the House Committee on Interior and Insular Affairs accompanying H.R. 498 indicated that the Committee itself was reluctant to accept the criminal investigation function from contracting by Indian tribes under P.L. 93-638, but the Committee believed that "638" tribal criminal investigators would not have status as federal law enforcement officials and their work product might be rejected by U.S. Attorneys; and

6. The primary sponsor of H. R. 498, Representative John Rhodes (Arizona), stated in the House that professionalism and dependability are essential, further explaining that was why the criminal investigation function was exempted from contracting under the Indian Self-Determination Act (P. L. 93-638); and

7. The Advisory Committee of the Navajo Tribal Council is aware that alternative and less drastic means exist to address the concerns of the House Committee and of Representative Rhodes, which would obviate the need to fashion such a drastic exception to the Indian Self-Determination Act, including statutory provisions for cross-deputization, specific definition of the federal authority of cross-deputized tribal criminal investigators, and statutory provisions for training and position/salary parity of tribal criminal investigators with that of their federal counterparts; and

8. Employment interests of Bureau of Indian Affairs criminal investigators who may be affected by tribal contracting are outweighed by the importance of the federal support for the sovereignty of Indian nations; and

9. The Advisory Committee of the Navajo Tribal Council recognizes that the Navajo Department of Law Enforcement has dedicated three (3) times the manpower which the Bureau of Indian Affairs had to criminal investigation and Navajo Department of Law Enforcement intends to alleviate a multitude of problems which went largely unchecked when the Bureau of Indian Affairs was conducting the criminal investigation function prior to tribal contracting and to return to a reliance upon the Bureau of Indian Affairs for the criminal investigation of serious felonies would represent a major step backwards for the people and sovereignty of the Navajo Nation; and

10. The United States Attorney for Arizona has commended the Navajo Police for their criminal investigation efforts since January 1989; in fact, by agreement with the United States Attorney the Navajo Police has assisted in the investigation and prosecution of vehicular manslaughter cases since 1982; and

11. The Public Safety Committee of the Navajo Tribal Council has passed a resolution opposing the erosion of tribal sovereignty by this federal legislation.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Advisory Committee of the Navajo Tribal Council opposes Congressional action which institutes increased Bureau of Indian Affairs law enforcement presence on the Navajo Nation and negates the opportunity for the Navajo Nation to contract under P.L. 93-638, the criminal investigation of serious felonies committed on the Navajo Nation.

2. The Advisory Committee of the Navajo Tribal Council supports the efforts of the Navajo Department of Law Enforcement to better the provision of law enforcement services to our people and exercise an increase in the sovereign powers of our Nation by performing the criminal investigation of serious felonies on the Navajo Nation in coordination with the United States Attorneys and other federal agencies.

3. The Advisory Committee of the Navajo Tribal Council asserts that notions of Tribal sovereignty outweigh the job security interests of certain Bureau of Indian Affairs employees affected by tribal contracting.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Advisory Committee of the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 9 in favor, 0 opposed and 1 abstained, this 19th day of July 1989.

Interim Vice Chairman
Navajo Tribal Council

SUPPLEMENTAL TESTIMONY BY MARTHA H. GARCIA, PRESIDENT,
RAMAH NAVAJO CHAPTER

FOR: The Senate Select Committee on Indian Affairs
Honorable Senator Daniel Inouye, Chairman

REGARDING: H.R. 498 - INDIAN LAW ENFORCEMENT REFORM ACT

SUBMITTED BY: Delfino Begay, Governor
Pueblo of Laguna

DATE: July 21, 1989

On Friday, July 21, 1989, Martha H. Garcia, President, Ramah Navajo Chapter, Ramah, New Mexico, is scheduled to present testimony before the Senate Select Committee on Indian Affairs regarding H.R. 498, the Indian Law Enforcement Reform Act.

The purpose of this supplemental is to inform you that the Pueblo of Laguna, Laguna, New Mexico, fully supports President Garcia's efforts to obtain $75,000 to continue funding in FY 1990 the position of Criminal Investigator located at the Bureau of Indian Affairs Laguna Agency. This position is of vital importance to the three reservations of Laguna, Ramah, and Zuni which the incumbent serves. The functions and technical assistance rendered by the Criminal Investigator enables each respective Tribal Government to operate its law enforcement programs in an efficient and effective manner.

In addition, I would like to inform you and the members of your committee that two proposed items in H.R. 498 are not supported by the Pueblo of Laguna and request they be deleted entirely or considered for major revision. They are: First, the contracting under the Indian Self-Determination and Education Assistance Act of criminal investigator positions. Tribes should be permitted to contract said positions if they can demonstrate their capability to perform and carry out all functions, duties, and responsibilities

associated with such positions. This in itself is keeping with the intent and purpose of self-determination. Second, line authority over criminal investigators should remain at the field level with Superintendents and Area Directors. For this responsibility to be kept hundreds of miles away at one central location, i.e., BIA, Central Office, Washington, D.C., would to some extent diminish the functions and delay the response time of criminal investigators in the field; thus, causing crucial evidence to be lost or destroyed. Such a scenario could also cause cases to be lost in the courts and the offender set free to commit the same or like crimes again, thereby, endangering lives and/or destroying property. This example is only one of many and to say the least is frightening.

Your support of President Garcia's testimony and request and consideration of the above is greatly appreciated. If you should have any questions or wish to discuss this matter, please feel free to call me at your convenience. I may be reached at (505) 552-6654 or (505) 243-7616.

CHEYENNE RIVER SIOUX TRIBE
CONGRESSIONAL TESTIMONY

H.R. 498
Indian Law Enforcement Reform Act

Statutory authority for Bureau of Indian Affairs Law Enforcement is greatly needed and has been adequately justified by previous testimony; however, certain provisions in the Bill are a cause of concern for the Cheyenne River Sioux Tribe.

The Tribe is troubled by the exemption of Criminal Investigation from contracting by tribes under P.L. 93-638; the removal of language requiring federal agencies to provide tribes justification or rationale for declining to investigate or prosecute cases; the deletion of provisions requiring these Agencies to turn over files to tribes for possible tribal prosecution; and, the inclusion of line authority which would remove supervision and direction from B.I.A. Area Directors and Agency Superintendents.

CONTRACTING:

1. How would this Bill effect contracted tribal Law Enforcement Programs? Would the Bill amend tribal contracts without tribal approval and take money from the contracts to place Bureau of Indian Affairs Investigators on site? If so, the Bill as it stands would add further strain to already overburdened tribal Law Enforcement Programs.

2. Will the separation of Criminal Investigation from the rest of tribal Law Enforcement allow agencies to disregard the Indian Priority System? If so, the Bill is in conflict with Indian rights to self-government.

3. Will each agency that presently has Criminal Investigators on their staff continue to have them? The Bill appears to be going in the opposite direction, but each agency should continue to have supervision over Criminal Investigation to insure that the Investigators are responsive to the tribes in their area.

FEDERAL DECLINATIONS:

The Tribe also requests elimination of language that would relieve Criminal Investigators of the responsibility to turn declined federal cases over to tribes for prosecution in tribal courts. These declined cases should be referred to tribes to ensure that these offenders are prosecuted. Failure to provide tribes the opportunity to pursue prosecution of alleged offenders could result in a state of lawlessness within reservations in derogation of Indian rights of self-governance.

LINE AUTHORITY:

Removing Criminal Investigative Activity from the jurisdiction of local authorities would essentially leave tribes out of the

budgeting process for this Activity. The Central Office Law Enforcement currently has three (3) Field Offices that are supervised by Headquarters staff. All three (3) offices are located off Reservations; and, with exception of the training provided by the Police Academy in Arizona, the Tribe receives no assistance or benefit from these operations. In fact, although this is a B.I.A. program, the States of New Mexico, Washington, and California each receive more benefits than all of the tribes in the Dakotas.

The Cheyenne River Sioux Tribe is very concerned that if this proposed legislation is enacted with line authority for Criminal Investigators, that the Bureau of Indian Affairs Law Enforcement will remove Criminal Investigators to locations off of the Reservation, which would cause delays in the investigation of these cases. These delays could last up to 24 or even 48 hours. During that time, the tribe would be responsible for protecting crime scenes until the arrival of the Investigators. The Tribe is presently understaffed, and is only able to provide police services 10 hours a day to the majority of the Reservation as it is. Any lack of responsiveness by Criminal Investigators would tie up staff and only add to our problems.

The Cheyenne River Sioux Tribal Government has worked long and hard to establish a cooperative atmosphere with federal and state entities on the Reservation. Having reached a point

where these entities are pulling together for the common cause of providing quality services to Reservation residents, the introduction of another organization with decision-making authority in Washington would be a step backwards in direct conflict with tribal self-governance.

SUPPLEMENTAL TESTIMONY

FOR: **The Senate Select Committee on Indian Affairs**
Honorable Senator Daniel Inouye, Chairman

REGARDING: **Martha H. Garcia, President, Ramah Navajo Chapter**
Testimony on H.R. 498 - INDIAN LAW ENFORCEMENT REFORM ACT

SUBMITTED BY: **Robert E. Lewis, Governor**
Pueblo of Zuni

DATE: **July 21, 1989**

On Friday, July 21, 1989, Martha H. Garcia, President, Ramah Navajo Chapter, Ramah, New Mexico, is scheduled to present testimony before the Senate Select Committee on Indian Affairs regarding H.R. 498, the Indian Law Enforcement Reform Act and a funding request for the Criminal Investigator working with the Zuni, Laguna and Ramah Navajo Law and Order departments on their Indian Reservations in New Mexico.

The purpose of this supplement is to inform you that the Pueblo of Zuni is in full support of President Garcia's efforts to obtain $75,000 to continue funding for the position of the Criminal Investigator in FY 1990 and located at the Bureau of Indian Affairs Laguna Agency. This position is of vital importance because the incumbent serves the Laguna, Ramah, and Zuni reservations. Although the functions and technical assistance rendered by the Criminal Investigator enables each respective Tribal Government to operate its law enforcement programs in a more efficient and effective manner, the tribes are expected to share their program funds to pay the salary and furnish the barest essential needs of the Criminal Investigator. Due to cuts in program funds, this is unacceptable to the concerned tribes.

In addition, I would like to inform you and the members of your committee that two proposed items in H.R. 498 are not supported

by the Pueblo of Zuni, therefore, we are requesting they be deleted entirely or considered for major revision. They are:

First, Section 3 (b) Division of Law Enforcement Services.

The Pueblo of Zuni Tribal Council do not agree to the establishment of this Division. Since the enactment of P.L. 93-638, of the Indian-Self Determination and Education Act and tribes began contracting for 638 programs, the base for law enforcement department budgets of tribes has been found to be very low and insufficient, to cope with the overall increase in crimes on all Indian reservations. Plus, our police officers obtaining excellent training with our program funds, are being taken away from us because of better salary levels at other law enforcement departments away from the reservation.

With the mentioned cuts in funds because of the national deficit, we see no reason for creating another Division that will take a considerable amount of funds for offices, personnel, and other, which will also create an added burden to the Secretarial level, where responsibilities are already top heavy and undermanned.

There has not been any real "look into" by the top level of our federal government law enforcement people into what we have to cope with in the outback areas of our reservations. Especially isolated areas like Zuni, where drug drops are being made.

Uninformed, misinformed and skeptical critics have criticized and are still doing so, our Indian Law Enforcement departments. The capabilities are there, but having to do with what we have to work around in funding, there is only a point that allows getting to, and no further.

There is so much to cover on this subject matter, which we would be very glad to bring to your attention.

Second, Section 3 (d) (2) Branch of Criminal Investigation.

This portion of the proposed Branch is also not acceptable to the Zuni Tribal Council. Unseen problems like land mines are going to be bottlenecks to meaningful and faster, positive results, through lost time.

Your support of President Garcia's request and consideration of the above issues would be greatly appreciated. Should you have any questions concerning this matter, please feel free to call me at your convenience. I may be reached at (505) 782-4481. Thank you.

The following is a joint statement for the Senate Select Committee on Indian Affairs by Lacy H. Thornburg, the Attorney General of the State of North Carolina, and Jonathan L. Taylor, the Principal Chief of the Eastern Band of Cherokee Indians of North Carolina, concerning H.R. 498, an act to clarify and strengthen the authority for Department of Interior law enforcement services in Indian country.

Lacy H. Thornburg has served as the duly elected Attorney General of the State of North Carolina since January 1985. Prior to his election as Attorney General, he served for sixteen years as the Resident Superior Court Judge of the state judicial district which includes the Indian country of the Eastern Band of Cherokee Indians.

Jonathan L. Taylor has served as the duly elected Principal Chief of the Eastern Band of Cherokee Indians, having served in that office since October 1987. Prior to his election as Principal Chief he served for sixteen years on the Tribal Council of the Eastern Band, including eight years as Chairman.

Law enforcement in Indian Country is a complex issue due to legal jurisdiction constraints where crimes involving Indians are within the federal and tribal systems and crimes involving only non-Indians are within the respective state systems. A frequent solution to this problem has been cross-deputization of federal and tribal officers by the State and state officers by the Department of Interior and the federally recognized tribes. Under the existing federal law, it is less than clear what authority these cross-deputization arrangements confer.

North Carolina has only one federally recognized tribe with an existing reservation within its boundaries, the Eastern Band of Cherokee Indians. In 1987, the General Assembly of North Carolina enacted Chapter 427 of the Session Laws of North Carolina to confer state arrest powers over non-Indians in Indian Country upon police officers of the Eastern Band of Cherokee Indians. Further, this legislation exempted a special officer or deputy special officer of the United States Bureau of Indian Affairs from the prohibition against dual office holding under state law. This legislation clarified many legal issues concerning our cross-deputization arrangements in Indian Country under state law. A copy of this ratified legislation is attached hereto and incorporated herein. In summary, this legislation extended state status similar to a municipal police department to police officers of the Eastern Band of Cherokee Indians within Indian Country. To our knowledge, this legislation is the first state law addressing this problem to be enacted in the United States.

HR-498 by providing in Section 5 for agreements between Federal, State, and tribal governments provides an ideal companion piece of legislation at the federal level to Chapter 427 of the North Carolina Session Laws. In this respect, HR-498 could not have come at a better time. State, tribal and local law enforcement and prosecutorial agencies in North Carolina are in the process of forming a multi-agency narcotics enforcement task force in the area of western North Carolina around and including the Indian Country of the Eastern Band of Cherokee Indians. Funding for this task force has already been secured by a grant from the Governor's Crime Commission of North Carolina. The speedy enactment of HR-498 would clarify federal law in a manner which

permits the extension of the benefits of that task force to the Indian Country of the Eastern Band of Cherokee Indians at the tribe's request to an extent never before possible.

The Eastern Band does have reservations about the advisability or necessity of removing the position of criminal investigator from eligibility for contracting under the Indian Self-Determination Act. The Eastern Band is currently proposing such contractual arrangements and believes this would provide more efficient service on the Cherokee Indian Reservation.

The Eastern Band also believes that the present provisions in the act which would remove the direct supervision of such investigative personnel from the Agency Superintendent would diminish rather than enhance the effective operation of such personnel. The Eastern Band's experience with the BIA's administrative and bureaucratic inefficiency lead it to believe that local and direct supervision is vastly superior, in efforts to insure prompt and professional services, than review by an Area Office or the Central Office, both of which are in Washington. The jurisdictional complexities in Indian country are best dealt with on the local and immediate level.

The Attorney General of North Carolina takes no position with respect to the federal - tribal administrative arrangements addressed in H.R. 498, but recognizes that the proposed legislation as a whole represents a vast improvement upon the current conditions.

We jointly commend the members of the Congress of the United States for their consideration of legislation improving the ability of Federal, State, local and tribal governments to cooperate in the protection of all our mutual citizens.

This the 21st day of July, 1989.

Lacy H. Thornburg
Attorney General of the
State of North Carolina

Jonathan L. Taylor
Principal Chief
Eastern Band of Cherokee
Indians of North Carolina

THE NAVAJO NATION

LEONARD HASKIE
INTERIM CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

IRVING BILLY
INTERIM VICE CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

July 19, 1989

Honorable Members of the Senate
Select Committee on Indian Affairs:

The Navajo Nation is at a critical stage in the definition of our law enforcement jurisdiction. The far-reaching effects of the intelligent exercise of our sovereign powers have become very apparent in Navajoland in past six months. Perhaps more importantly, our Nation has evidenced that its system can work. Due process, equal protection and cultural preservation have been observed and tested. Due to the media attention afforded us, the world has been granted the opportunity to watch our Nation at a time of controversy. Our own people have benefitted by the opportunity to learn about and take to heart the workings of our government. We see room for improvement but feel a confidence that the system is viable.

The legislation which is before you represents a giant step backwards in the evolution of the sovereign powers of the Navajo Nation. Sovereignty is not only an attribute of a Nation of independence, but also a process which it must follow. The enforcement by a Nation of its laws signifies a commitment to those laws.

The Navajo Nation has suffered the efforts outside agencies attempting to address our unique law enforcement concerns. We are convinced that given ample opportunity to serve our own people we will surpass these prior attempts. We look forward to continuing the development of our law enforcement program and coordinating with the United States Attorneys in the investigation and prosecution of serious crimes in our land.

The passage of the Indian Law Enforcement Reform Act is a damaging and unnecessary and radical department from the Indian Self-Determination Act and the 1988 amendments to the Act. The Navajo Nation stands in opposition to any legislation which threatens or decreases the right of tribes to exercise our sovereign powers.

We trust that when you consider the proposed Act, you will bear our interests and rights in mind. Thank you.

Sincerely,

Leonard Haskie
Interim Chairman
The Navajo Tribal Council

IH:phm

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July 28, 1989

The Honorable Daniel K. Inouye
Chairman
Select Committee on Indian Affairs
United States Senate
838 Hart Senate Office Building
Washington, D.C. 20510-6450

Attention: Peter Taylor, Esquire

Re: The Indian Law Enforcement Reform Act, H.R. 498

Dear Senator Inouye:

On behalf of our clients, the Oglala Sioux Tribal Public Safety Commission and the Oglala Sioux Tribe, we are grateful to you for providing the Tribe with the opportunity to present testimony on H.R. 498 at the hearing on July 21, 1989.

We are thankful for your responsiveness to the concerns expressed by the Tribe and other tribal witnesses, especially with respect to the provision in section 3(d) of H.R. 498 that would exempt the investigation of major federal crimes from contracting pursuant to the Indian Self-Determination Act. In revising the bill, as you directed your staff to do, we suggest that careful consideration be given to the alternative bill that was included in the written testimony of Paul Iron Cloud, President of the Oglala Sioux Tribe.

We note that testimony submitted by U.S. Attorneys Philip N. Hogen and Stephen M. McNamee supports contracting of the criminal investigative function, with the recommendation

that the burden of proof regarding the ability to perform the contract be shifted from the Secretary to the Tribe, in accordance with objective criteria to be prescribed by the Secretary. We do not believe the burden should be shifted. Rather, we believe that the burden should remain with the Secretary. Congress has made clear its intention thatthe program of the Bureau of Indian Affairs should be operated under tribal contracts unless the tribal government does not apply or the Bureau is able to establish that one of the grounds for declination is satisfied. Any additional objective declination criteria that may be made applicable to such contracts should be established by Congress rather than by the Secretary.

We also request that you and your staff give consideration to section 11 of the Oglala Sioux alternative bill, which would direct the Secretary to establish three to five tribal demonstration projects in highway safety. The establishment of such projects could help to develop practical solutions for law enforcement problems that affect the public highways in the Indian country.

Sincerely yours,

HOBBS, STRAUS, DEAN & WILDER

Dean B. Suagee

By: Dean B. Suagee

cc: Mr. Paul Iron Cloud
Mr. Paul Rooks
Mr. Louis Whirlwindhorse

Note to Pete Taylor:

I have enclosed two pages of the testimony of Paul Iron Cloud, pages 2 and 7. Each of these pages contained a typographical error. Please include the two enclosed corrected pages in the record of the hearing, replacing the two pages that have typos.

Thanks, DBS

JUL 2 4 1989

THE NAVAJO NATION

LEONARD HASKIE
INTERIM CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

IRVING BILLY
INTERIM VICE CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

July 21, 1988

Chairman Daniel K. Inouye
Select Committee on Indian Affairs
SH-838 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

As Chairman of the Public Safety Committee of the Navajo Tribal Council, I am writing to express my deep concern regarding the Indian Law Enforcement Reform Act, H.R. 498, which is now before your committee. As written, H.R. 498 prohibits the contracting by tribes of the criminal investigation function pursuant to P.L. 93-638. Such a provision is an affront to tribal sovereignty and defeats the spirit of Indian self-determination, which has previously been encouraged by Congress through P.L. 93-638. In addition, H.R. 498 will force the Navajo nation to rely on the BIA for law enforcement and prosecution of serious crimes -- an arrangement which has been severely inadequate in the past.

I enclose with this letter a copy of the July 14, 1989 resolution of the Public Safety Committee of the Navajo Tribal Council. The resolution reflects our opposition to H.R. 498 within the Navajo Tribal Council.

I urge you to reject the provision of H.R. 498 which exempts the criminal investigative functions of the BIA from the requirement of P.L. 93-638.

I appreciate your consideration of these comments in the course of your deliberations. I would greatly appreciate having this letter and attachments submitted to the committee record.

Sincerely,

Wallace Tsosie, Chairman
Public Safety Committee
Navajo Tribal Council

Enclosure

RESOLUTION OF
THE PUBLIC SAFETY COMMITTEE OF
THE NAVAJO TRIBAL COUNCIL

Supporting the Exercise of Tribal Sovereignty Through Provision of Law Enforcement Services and Criminal Investigation of Serious Felonies by the Navajo Department of Law Enforcement and Opposing Any Federal Legislation or Action Which Erodes That Sovereignty.

WHEREAS:

1. The Public Safety Committee of the Navajo Tribal Council is charged with the authority and responsibility to coordinate legislative activities relating to police services, 2 N.T.C. § 662(1), and make recommendations to the Navajo Tribal Council on law enforcement legislation, 2 N.T.C. § 664(b)(7); and

2. H.R. 498, the Indian Law Enforcement Reform Act, a copy of which is attached hereto as "Exhibit A" and incorporated herein, was passed by the United States House of Representatives of May 23, 1989, and is currently under consideration by the Senate Select Committee on Indian Affairs which will make recommendations to the Senate prior to the Senate vote on passage of the Act; and

3. H.R. 498 as written provides a statutory basis for Bureau of Indian Affairs law enforcement presence on Indian lands and prohibits the contracting by tribes of the criminal investigation function pursuant to P.L. 93-638, the Indian Self Determination Act; the latter provision negates the opportunity for tribes to exercise an important aspect of tribal sovereignty, that is, to participate with the United States Attorneys in the investigation and prosecution of serious felonies committed on the Navajo Nation; and

4. The Navajo Nation Department of Law Enforcement recently contracted with the Bureau of Indian Affairs to assume the criminal investigation function of law enforcement on the Navajo Nation; effective January 1, 1989, Navajo Department of Law Enforcement has worked with the United States Attorneys and investigated serious felonies and assisted in their prosecution; Navajo Department of Law Enforcement has dedicated three times the manpower as the Bureau of Indian Affairs had previously allotted in an effort to alleviate problems which have gone largely unchecked in the past.

0553RWH.TRG

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Public Safety Committee of the Navajo Tribal Council recognizes the importance of law enforcement services as an exercise of tribal sovereignty and is proud that Navajo Department of Law Enforcement is providing these services to our people; and

2. The Public Safety Committee is concerned at the prospect of regressing to a law enforcement system whereby citizens of the Navajo Nation must rely upon the Bureau of Indian Affairs for protection, and investigation leading to and assisting in the prosecution of serious crimes on the Navajo Nation, an arrangement which experience has shown is severely lacking and has created a dangerous environment on the Navajo Nation; and

3. The Public Safety Committee of the Navajo Tribal Council supports the efforts of the Navajo Department of Law Enforcement to carry out its criminal investigation duties under the current P.L. 93-638 law enforcement contract with the Bureau of Indian Affairs and opposes Congressional action which controverts the spirit of Indian Self-Determination and would limit the ability of tribes to contract the criminal investigation function and erodes the sovereignty of the Navajo Nation as developed through implementation of the Self-Determination Act; and

4. The Public Safety Committee of the Navajo Tribal Council opposes increased Bureau of Indian Affairs law enforcement jurisdiction and presence on the Navajo Nation; and

5. The Public Safety Committee of the Navajo Tribal Council recommends to the Advisory Committee of the Navajo Tribal Council that as the official voice of the Navajo Nation on matters involving federal legislation, 2 N.T.C. 343(b)(6), the Advisory Committee oppose the passage of H.R. 498, the Indian Law Enforcement Reform Act for the reasons cited above.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Public Safety Committee of the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (AZ), at which a quorum was present and that the same was passed by a vote of 5 in favor and 0 opposed, this 14th day of July, 1989.

Wallace Tsosie
Presiding Chairman

0553RWH.TRG

COMMENTS
H.R. 498, Indian Law Enforcement Reform Act

Presented on benalf of tne Inter Tribal Council of Arizona
July 21, 1989

The Inter Tribal Council of Arizona (ITCA) is an organization of 19 Arizona tribal government leaders through wnich common tribal concerns are addressed. We appreciate tne opportunity to comment on H.R. 498, tne Indian Law Enforcement Reform Act.

The Inter Tribal Council of Arizona supports tne basic intent of tne legislation which is to clarify and strengtnen tne authority of tne Bureau of Indian Affairs law enforcement services on tribal lands. However, tribal governments in Arizona, Nevada and Utah are concerned witn certain provisions contained within the proposed legislation. A resolution adopted at the June 26, 1989 joint meeting of the Inter Tribal Council of Arizona and Nevada and the tribes located in Utah is attached for your review.

Of primary concern is the provision wnich would prevent tribes from contracting criminal investigative functions. This provision is in direct conflict of federal policy to recognize, strengthen and support tribal self-government as stated in P. L. 93-638, tne Indian Self-Determination and Education Assistance Act and P.L. 100-472, tne Indian Self-Determination and Education Assistance Act Amendments of 1988.

Tribes are concerned witn tne safety and well-being of community members and the abilities of law enforcement personnel to appropriately respond. An indicator of the level of tribal

concern is the willingness of tribes to assume greater responsibility over law enforcement functions since it is perceived by tribes that the Federal Bureau of Investigations has curtailed its criminal investigative role over major crimes to a minimum. Apparently there is concern on the part of federal agencies regarding the lack of professionalism and dependability about existing Bureau of Indian Affairs and tribal criminal investigative units. ITCA wishes to point out that there are tribal criminal investigative units which operate professionally, are well trained, experienced and dependable. Support is key to developing a professional tribal criminal investigative unit.

ITCA recommends that adequate funds be made available to upgrade and train on a continuous basis, tribal criminal investigators. ITCA also recommends that tribal law enforcement officers and criminal investigators meet state or national standards and not be limited to the BIA law enforcement training standards.

The Inter Tribal Council of Arizona does not support the provision which separates investigative functions from other law enforcement functions. The division is counterproductive and does not reflect the spirit of cooperation needed to protect tribal communities.

The Inter Tribal Council of Arizona recommends the following for regarding declinations:

- law enforcement officials should be the only tribal administrative personnel involved in receiving reports stating the reasons why investigations were declined or

terminated. It is not appropriate that other tribal governmental officials be involved.

- a specific timeframe should be identified for submitting such reports to the tribe. The Inter Tribal Council recommends that timeframe be six weeks from the date of the reported violation.

The Inter Tribal Council appreciates the opportunity to comment on H.R. 498.

Joint Resolution

WHEREAS, the Inter Tribal Council of Arizona, comprised of 19 Indian Tribes, and Inter Tribal Council of Nevada, comprised of 24 tribal groups and Uintah and Ouray Ute Tribe of Utah, and Paiute Tribe of Utah are concerned about the safety and well-being of their community members; and

WHEREAS, the Indian Law Enforcement Reform Act was developed to clarify and strengthen the authority of certain law enforcement services, activities, and officers of the Department of the Interior in Indian country; and

WHEREAS, the legislation contains a provision which would prevent tribes from contracting under the Indian Self-Determination Act, criminal investigative functions; and

WHEREAS, this is a radical departure from the intent of the self-determination law and opposite last year's declaration by Congress of its commitment to "... the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services." (P.L. 100-472 Indian Self-Determination and Education Assistance Act Amendments of 1988); and

WHEREAS, the proposed limitations for contracting were a result of perceptions regarding the lack of professionalism and dependability within the existing branch of criminal functions; and

WHEREAS, the Federal Bureau of Investigation has curtailed its criminal investigative role over major crimes to a minimum resulting in tribes assuming greater responsibility over law enforcement functions; and

WHEREAS, tribes are committed to providing the most responsive and competent law enforcement services to its members and to achieve this goal, are willing to require the highest standards of education, training and qualification; and

WHEREAS, tribes are willing to cooperate and work with state law enforcement agencies to minimize jurisdictional disputes and enhance mutual respect and reciprocity;

NOW THEREFORE BE IT RESOLVED, the ITCA, ITCN, the Uintah & Ouray Ute Tribe and the Paiute Tribe of Utah strongly recommend that tribes should not be limited to BIA law enforcement training standards;

AND BE IT FURTHER RESOLVED, Section 10 of Senator John McCain's proposed "Indian Law Enforcement Reform Act" Reports to Tribes, be amended as follows:

- to exclude the language "appropriate governmental and";

- to include a timeframe of six weeks from the date of the reported violation for the making of such reports;

AND BE IT FURTHER RESOLVED, the ITCA, ITCN, the Uintah & Ouray Ute Tribe and the Paiute Tribe of Utah support a provision in the proposed legislation which would authorize tribes to assume responsibility over criminal investigative functions;

AND BE IT FUTHER RESOLVED, the Senate Select Committee for Indian Affairs be requested to amend the proposed Indian Law Enforcement Reform Act to reflect this resolution.

Certification

The foregoing resolution was adopted at a duly called meeting of the Inter Tribal Council of Arizona, Inter Tribal Council of Nevada, Uintah and Ouray Ute Tribe of Utah, and the Paiute Tribe of Utah on June 26, 1989 where a quorum was present and the same unanimously passed.